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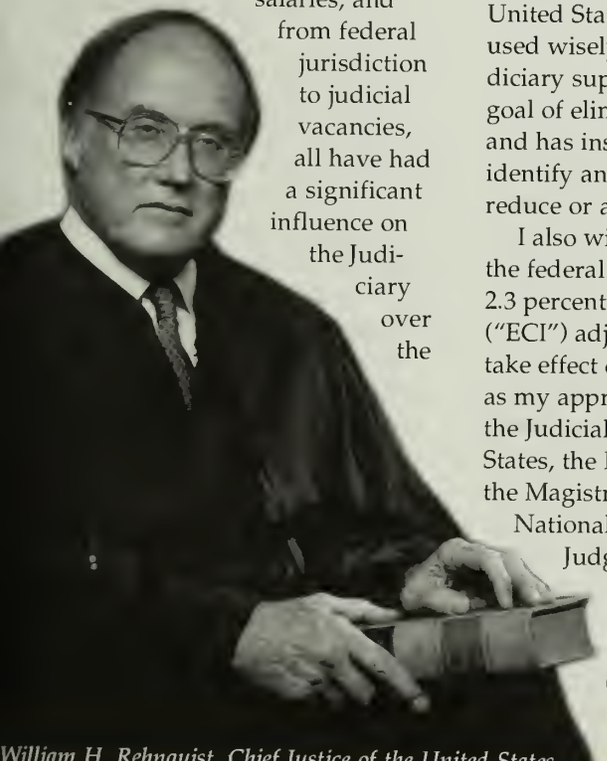
ADMINISTRATIVE OFFICE

The 1997 Year-End Report of the Federal Judiciary

Overview

As I review the state of the Judiciary this year and compare it with the 11 previous years I have served as Chief Justice, I am impressed by the degree to which our relations with Congress have dominated 1997. Congressional responses and initiatives on judicial issues ranging from funding to salaries, and from federal jurisdiction to judicial vacancies, all have had a significant influence on the Judiciary over the past year. The results have been mixed—which is scarcely surprising—and therefore we will face some of the same challenges in 1998 that confronted us in 1997. Despite the work that remains to be done, I am encouraged by the Judiciary's ability to perform its essential role in our constitutional structure of government.



William H. Rehnquist, Chief Justice of the United States

Funding, Salaries, Jurisdiction, and Vacancies

I first would like to express my gratitude to Congress for its financial support of the Judiciary. In a time of scarce resources, Congress responded favorably to the careful financial plan adopted by the Executive Committee of the Judicial Conference of the United States. These moneys will be used wisely and economically. The Judiciary supports fully the national goal of eliminating the budget deficit and has instituted a formal process to identify and implement initiatives to reduce or avoid costs.

I also wish to extend the thanks of the federal judges to Congress for the 2.3 percent Employment Cost Index ("ECI") adjustment that it approved to take effect on January 1, 1998, as well as my appreciation to the members of the Judicial Conference of the United States, the Federal Judges Association, the Magistrate Judges Association, the National Conference of Bankruptcy Judges, the Federal Bar Association, the American Bar Association, judges, the staff of the Administrative Office of the United States Courts, and various other bar groups for all the time and energy they invested this year on the issue of judicial compensation. In particular, Ralph Mecham and his legislative staff, and Judge Barefoot Sanders and the members of his Committee on the Judicial Branch, deserve special recognition.

In my last Year-End Report, I noted that Congress had not granted federal judges an ECI adjustment in four years, thereby reducing judges' salaries in constant dollars by 8.6 percent. During 1997, the aforementioned groups and organizations worked very hard to rectify the situation. They urged Congress both to repeal Section 140 of the Continuing Resolution Act of December 15, 1981, Public Law 97-92 ("Section 140"), which provides that no salary increases shall be granted to federal judges without express legislative approval, and to provide a catch-up pay adjustment equal to the ECI adjustments not granted since 1993.

Although we are pleased that Congress approved the 2.3 percent adjustment, it is obviously not an enduring solution to a problem that continues to endanger the morale and quality of the federal Judiciary. In general, all the adjustment does (assuming that inflation in 1997 is about 2.3 percent) is to ensure that federal judges are, in absolute terms, no worse off than they were at the end of last year. It prevents further deterioration of "real" judicial salaries. But it does not redress previous loss, or the disparity I noted last year between federal judicial salaries and the salaries of the profession from which federal judges are recruited.

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The federal Judiciary must shortly go back to Congress to seek the relief it needs and deserves. Only then will judges who make a lifetime commitment to public service be able to plan their financial futures based on reasonable expectations of compensation.

With regard to the non-monetary problems currently troubling the federal Judiciary, most are directly related to its large and expanding workload. Fiscal Year 1997 saw courts of appeals and bankruptcy filings at their highest rates in history. District courts also were very busy. In addition to a small increase in civil filings, there was a 5 percent increase in criminal cases in 1997, producing the largest federal criminal caseload in 60 years. Many factors have produced this upward spiral, including laws enacted by Congress that expand federal jurisdiction over crimes involving drugs and firearms, Supreme Court decisions, large class-action litigation, and changes in executive prosecution policies. Unless steps are taken to stop or reverse this trend, either the demands placed on the federal Judiciary will eventually outstrip its resources, or the Judiciary will become so large that it will lose its traditional character as a distinctive judicial forum of limited jurisdiction.

Since December 1990, the last time Congress created any new judgeships, the number of cases filed in courts of appeals has grown by 21 percent and those filed in district courts have increased by 24 percent. Largely because of this expanding caseload, in March 1997 the Judicial Conference of the United States recommended to Congress the creation of 12 permanent court of appeals judgeships and five temporary court of appeals judgeships as well as 24 permanent and 12 temporary district court judgeships. After several months of deliberation, Congress extended 11 existing temporary judgeships for an additional five years—for which the Judiciary is grateful—but did not create any additional judgeships. A judgeship was added to one district by taking another away from a different district, but that was as far as Congress was willing to go.

In general, Congress has declined to eliminate the disparity between resources and workload in the federal Judiciary by an expansion of the number of judges. There have been instances, however, in which Congress wisely has acted to reduce this disparity by enacting laws that in effect decrease the number of potential filings in federal court. In 1996, Congress enacted the Antiterrorism and Effective Death Penalty Act, which streamlined habeas corpus procedures for both state and federal prisoners, and the Prison Litigation Reform Act (PLRA), which did the same for prisoners' civil rights actions.

Although it is too early to make definitive judgments concerning the impact these laws will have on prisoner suits, the evidence thus far strongly suggests that they will have a positive effect. The one-year statute of limitations for both state and federal prisoner applications for writs of habeas corpus produced a sharp rise in applications between February and April 1997, but then they dropped off sharply. As of June 1997, the number of habeas corpus applications has fallen well below the average number of monthly filings during the 15 months prior to the law's enactment in April of 1996. PLRA achieved a similar result. Monthly civil rights filings by prisoners decreased 46 percent from April 1996 to February 1997.

With the limited degree of hindsight available to us—and keeping in mind that there are many variables that could affect the future rate of prisoner filings in federal court—the Effective Death Penalty Act and the PLRA appear to be promising examples of how Congress can reduce the disparity between resources and workload in the federal Judiciary without endangering its distinctive character. Unfortunately, Congress' efforts to enact legislation of this type have been sporadic and inconsistent. I therefore call on Congress to consider legislative proposals that would reduce the jurisdiction of federal courts. For many years, diversity of citizenship cases have been identified as one such area in which Congress could enact some very useful reforms.

Should Congress, conversely, consider expanding the jurisdiction of the federal Judiciary, it should do so cautiously and only after it has considered all the alternatives and the incremental impact the increase will have on both the need for additional judicial resources and the traditional role of the federal Judiciary. In particular, the Judicial Conference of the United States has raised concerns about legislation pending in Congress to "federalize" certain juvenile crimes, maintaining its long-standing position that federal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts.

This desire to federalize new crimes or civil causes shows that the federal Judiciary has become a victim of its own success. The congressional desire to federalize stems from the sense that the federal courts, by and large, render a brand of justice that is both more dependable and more efficient than that rendered by some of the state systems. But no small part of the success of the federal system—its ability to attract first-rate talent, for example—is because the federal courts have traditionally been courts of limited jurisdiction. If the federal system ends up with the same sort of potpourri of cases that state courts must necessarily decide, it may lose the special competence that now sets it apart from many state systems.

If federal jurisdiction remains at its current level—or, worse, increases—judicial vacancies will aggravate the problem of too few judges and too much work. Currently, 82 of the 846 Article III judicial offices in the federal Judiciary—almost one out of every ten—are vacant. Twenty-six of the vacancies have been in existence for 18 months or longer and on that basis constitute what are called "judicial emergencies." In the Court of Appeals for the Ninth Circuit, the percentage of vacancies is particularly troubling, with over one-third of its seats empty.

Judicial vacancies can contribute to a backlog of cases, undue delays in civil cases, and stopgap measures to shift judicial personnel where they are most needed. Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that

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ported results from its first survey of public attitudes towards federal sentences. More than 1,700 citizens throughout the United States expressed their opinions on crime and punishment as part of a study of "just punishment," one of the four statutory purposes of sentencing. Also this year, the Commission submitted to Congress a second report and recommendation on revising the federal cocaine sentencing policy. It again unanimously recommended that the disparity in federal penalties for powder cocaine and crack cocaine be reduced and suggested a range of possible options to accomplish this end. Another Commission report to Congress concluded that "broad and inconsistent use of money laundering penalties" is contributing to substantial unwarranted disparity.

The Commission formed an office of legislative and public affairs in 1997 to communicate more effectively with Members of Congress, the Commission's many customers, and the public. In addition, the agency inaugurated a series of "mini-hearings" on specific guideline-related topics to increase public input into the ongoing assessment of the Sentencing Guidelines' effectiveness.

The Commission produced two public service announcements in 1997 to deter youth from becoming involved in drug crimes. These 30-second announcements, distributed to more than 5,000 network and cable television stations, received extensive exposure across the country. Additionally, the Commission is examining ways of using new technologies like electronic mail and document imaging to collect, analyze, and archive more efficiently the massive amounts of federal sentencing data it receives each year.

Administrative Office of the United States Courts

The Administrative Office of the United States Courts serves the Judicial Conference of the United States and the federal courts in many ways. It collects data and analyzes statistics, consults with the courts about their needs and priorities, makes improvements in judicial administration, and implements and promotes Judicial Conference policies and programs. In addition, it is instrumental in the Judiciary's success in obtaining adequate appropriations and in communicating the Judiciary's views to Congress on legislative matters that affect the operations of the Judiciary.

Led by the Administrative Office's efforts, the federal Judiciary has achieved an impressive devolution of management authority and control away from Washington to the individual federal courts. The Director has delegated to local federal courts many of his statutory financial, personnel, procurement, and other administrative authorities. This kind of decentralization has benefited both the Judiciary and the taxpayer because it encourages every court to find innovative ways to increase efficiency and save money. Decentralized management has established the Judiciary as an archetype for other complex public and private institutions, and it has also garnered the attention of judicial leaders and administrators from other nations.

The key to the success of the budget decentralization program is national spending controls combined with local accountability and flexibility. The individual courts determine how to spend funds for staff, equipment, supplies, and services to meet their particular needs. To enhance this program further, the Administrative Office this year simplified the way it allots operating funds to the courts. Funds previously allocated in 40 separate expense categories were combined in one aggregate amount based on formulas developed by teams of statisticians, financial analysts, program experts, and court staff. As a result, the paperwork burden for preparing each court's budget request was substantially reduced or eliminated, and the courts were assured of an equitable distribution of these operating funds.

The Administrative Office is testing prototype electronic case file systems, which will enable courts to receive, store, and retrieve documents electronically. Also this year, testing began on a new state-of-the-art financial accounting system for the courts. Experiments demonstrated that mobile computing enabled probation officers to access information away from the office, allowing them to spend more time in the community supervising offenders. New systems for personnel and payroll processing, jury administration, and library administration are also in progress. An evaluation is under way to assess the practicality and cost-effectiveness of a variety of technologies, such as real-time reporting, digital-audio recording, and evidence presentation devices that show promise to facilitate courtroom procedures. In concert with the Federal Judicial Center, the Administrative Office is helping to develop a federal judicial television network that will broadcast educational and informational programming by satellite to judges and court employees nationwide.

Federal Judicial Center

The Federal Judicial Center provides education, training, and research for the federal Judiciary.

This summer the FJC Board approved a strategic plan to guide the FJC in the years ahead. The plan recommends some changes in the FJC's research operations and discontinuance of its occasional support of automation innovations in the courts. It also responds to Congress' interest in reducing government spending on travel by directing the FJC to continue its emphasis on satellite broadcasting and other forms of "distance learning." This year, for example, the FJC introduced a newsletter series and a satellite broadcast that will help probation officers deal with the problems presented by particularly difficult offenders, such as members of street or prison gangs.

Almost 85 percent of the 34,000 judicial branch participants in FJC programs received training in their own courts. Next year FJC broadcasts will reach even larger audiences through the federal judicial television network described in the previous section. I also participated in a satellite broadcast by introducing the FJC's July 1997

In addition, criminal cases increased 5 percent, civil filings 1 percent, and appeals filings 1 percent.

This 5 percent increase in criminal cases brought the total number of criminal cases to 50,363, the highest level in over 60 years. This year's increase was due primarily to filings related to drug and immigration cases in the southwestern border districts of the United States. Drug case filings rose 13 percent to 13,656 and immigration case filings increased 21 percent to 6,677. Filings of weapons and firearms cases and drunk driving and traffic violations remained stable.

The number of civil filings in the U.S. district courts was 272,027. The small increase in filings was attributable primarily to increases in actions involving the United States as a plaintiff or defendant and in filings pertaining to federal question jurisdiction, usually in personal injury/product liability cases. U.S. plaintiff or defendant actions increased 23 percent in 1997, rising from 48,755 to 60,004 cases. U.S. plaintiff cases increased 35 percent, primarily because filings involving contract actions almost doubled. The influx of recoveries of overpayments related to defaulted student loans grew from 4,460 to 9,043 and was the key reason for the overall increase in contract actions. The number of filings with the U.S. as defendant also rose, primarily because of a 46 percent jump in social security filings. Social security disability insurance cases increased 47 percent, rising by more than 2,400 cases, largely as the result of the Social Security Administration's processing of a large backlog of cases. Prisoner petitions dropped 8 percent this year primarily because of a 31 percent drop in civil rights petitions filed by prisoners. This reduction stemmed from the PLRA, which, among other provisions, places limitations on how prisoner petitions may be filed. This drop nearly offsets the other increases in the civil caseload in the district courts, resulting in the small percentage increase in filing overall. The drop in prisoner petitions contributed to a 2 percent decrease in total federal question litigation. However, a 90 percent rise in personal injury/product liability cases related to breast implants contributed to the overall national rise. Civil filings in the Eastern District of Michigan skyrocketed by more than 10,000 cases as a result of the recent decision involving Dow Chemical in the Sixth Circuit Court of Appeals. This decision led to the filing of breast implant cases in Eastern Michigan, where Chapter 11 federal bankruptcy proceedings involving the Dow Corning Corporation are pending.

Appeals filed in the 12 regional courts of appeals set a record level of more than 52,300. The overall increase resulted from administrative agency appeals and original proceedings, which rose 56 percent and 16 percent, respectively. Civil, criminal, and bankruptcy appeals declined, falling 3 percent, 2 percent, and 19 percent, respectively.

The Supreme Court of the United States—Caseload Statistics

The total number of case filings in the Supreme Court increased from 6,597 in the previous term to 6,634 in the 1996 Term—an increase of slightly more than 0.5 percent. Filings in the Court's in forma pauperis docket increased from 4,500 to 4,578—a 1.7 percent rise. The decline in the Court's paid docket was only 40 cases, from 2,095 to 2,055—a 1.9 percent decrease. During the 1996 Term, 90 cases were argued and 80 signed opinions were issued, compared to 90 cases argued and 75 opinions issued in the 1995 Term. No cases from the 1996 Term were scheduled for re-argument in the 1997 Term.

United States Sentencing Commission

The Sentencing Commission, like the federal Judiciary, suffers from serious delays in the appointment process. The terms of Vice Chairman Michael Gelacak and Commissioners Michael Goldsmith and Judge Deanell R. Tacha expired in late 1997. These commissioners will continue to serve for up to one year or until new appointments are confirmed, but their vacancies must be considered in the light of three previous vacancies on the seven-member panel. The long and the short of the matter is that for the Commission to function properly six appointments to vacancies are needed. Two of the positions have been vacant since October 1995, one of the positions has been vacant since May 1997, and the three remaining positions have been vacant since October 1997. The Judicial Conference of the United States acted promptly in making its recommendations to the President with regard to the judicial vacancies on the Commission. But the President has simply not made any nominations to fill these vacancies. The function of the Sentencing Commission may not be well known to the general public, but it serves a vitally important function in the enforcement of the criminal law in federal courts. Its statutory function is seriously hindered by this inaction.

Sentencing-related research continued as a top agency focus in 1997. Early in the year, the Commission re-

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traditionally has been associated with the federal Judiciary. Fortunately for the Judiciary, a dependable corps of senior judges has contributed significantly to easing the impact of unfilled judgeships.

The institutions that have the constitutionally assigned powers of nominating and confirming judicial nominees bear some of the responsibility for the current situation, but structural aspects of the appointment process also contribute to the existing high level of vacancies. For example, a larger Judiciary increases the average number of retirements per year and the corresponding number of nominees. The additional burdens placed on the appointment process by such an increase may slow it down. An appointment process that might work well to fill the vacancies of a 700-member Judiciary might struggle with a Judiciary of 800 or 850 members. Accordingly, increasing the size of the federal Judiciary so that it can handle expanded workloads might have the unintended effect of increasing the vacancy rate, perhaps leaving unaffected the gap between resources and workload that motivated the initial increase in the number of judges. This ironic result strongly supports the common-sense conclusion that, in this country, a bigger federal Judiciary is not necessarily a part of a solution for every public-policy question.

Whatever the size of the federal Judiciary, the President should nominate candidates with reasonable promptness, and the Senate should act within a reasonable time to confirm or reject them. Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed during 1994.

The Senate is, of course, very much a part of the appointment process for any Article III judge. One nominated by the President is not "appointed" until confirmed by the Senate. The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down. In the latter case, the President can then send up another nominee.

Special Commissions and Appointments

During 1997, two measures to study important issues pertaining to the federal Judiciary were initiated. This past fall, in another example of the way the three branches of our government work together, Congress passed a bill creating a Commission on Structural Alternatives for the Federal Courts of Appeals which the President signed into law on November 26, 1997. This Commission will study the structure and alignment of the nation's court of appeals system, particularly the Ninth Circuit, and report within 12 months its findings to the President and Congress. In accordance with the provisions of this law, I appointed to this Commission Retired Justice Byron R. White; U.S. Circuit Judge Gilbert S. Merritt of the U.S. Court of Appeals for the Sixth Circuit; U.S. Circuit Judge Pamela Ann Rymer of the U.S. Court of Appeals for the Ninth Circuit; U.S. District Judge William D. Browning of Arizona; and N. Lee Cooper, former President of the American Bar Association, of Birmingham, Alabama.

The second effort to study issues of importance to the federal Judiciary was generated within the Third Branch. In July of 1997, the Federal Judicial Center requested the Executive Committee of the Judicial Conference to consider and recommend that the Judicial Conference concur in the FJC's recently adopted strategic plan. Because the strategic plan at points would affect the Administrative Office of the United States Courts, the Executive Committee recommended that I appoint an Ad Hoc Committee of the Judicial Conference to study the merits of the motions and make a report and recommendation to the Conference for its consideration in March 1998. The Conference approved the Executive Committee's recommendation on September 23, 1997, and on October 20, 1997, I appointed Judge Wm. Terrell Hodges as Chair of the Ad Hoc Committee and Judges William H. Barbour, Jr., Boyce F. Martin, Jr., Robert L. Miller, Jr., and Stephanie Kulp Seymour as members.

"Congressional responses and initiatives on judicial issues ranging from funding to salaries, and from federal jurisdiction to judicial vacancies, all have had a significant influence on the Judiciary over the past year. The results have been mixed—which is scarcely surprising—and therefore we will face some of the same challenges in 1998 that confronted us in 1997."

The Year In Review

The Federal Courts' Caseload

In 1997, the caseload of U.S. bankruptcy courts soared to a record level for the second consecutive year, climbing 23 percent. More than 1,350,000 petitions were filed in Fiscal Year 1997, easily topping the previous record of approximately 1,111,000 filings recorded in Fiscal Year 1996. Filings under Chapters 7 and 13 were responsible for the increase, with the overall jump in filings emanating predominantly from non-business petitions. Chapter 7 filings, which accounted for more than 70 percent of all bankruptcy filings, rose 26 percent. Chapter 13 filings, which constituted 29 percent of all bankruptcy filings, increased 18 percent. Chapter 11 filings, which amounted to less than 1 percent of all bankruptcy filings, dropped 11 percent. Chapter 12 filings, which equalled less than 0.1 percent of all bankruptcy filings, declined 12 percent.

review of major decisions in the Supreme Court's 1996 Term.

Among its research products this year, the FJC provided the Judicial Conference's Civil Rules Committee an interesting analysis of the effect of "pretrial disclosure" rules that the Conference adopted in 1993 to reduce litigation costs and delays. These rules allow courts to direct attorneys to disclose pretrial materials to opponents rather than requiring them to ferret out each other's materials through traditional discovery. Although a majority of attorneys surveyed by the FJC thought "disclosure" made little difference, those who perceived an effect—a reduction in cost and delay, and an increase in fairness—favored its adoption in all federal courts.

FJC research assisted other Judicial Conference committees. For example, its review of alternative dispute resolution programs in "demonstration districts" under the Civil Justice Reform Act provided a view of the efficacy of these programs different from one that emerged from a separate study of the Act's pilot districts. And the Judicial Conference this year approved a "risk prediction index" that the FJC developed to help probation officers determine the likelihood that an offender may commit another crime and tailor supervision plans accordingly. Within three months of the Conference's approval of the new "RPI," the FJC produced a multi-media training plan for probation offices.

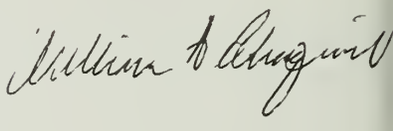
These activities demonstrate the value of a separate research and education center within the judicial branch to provide policymakers and judges fresh perspectives on the vexing issues the courts confront in adapting procedures for their improved management.

In Memoriam

The Judiciary and the country lost a dear friend and dedicated public servant in 1997. Justice William J. Brennan, Jr., passed away on July 24, 1997. Justice Brennan served on the Supreme Court of the United States for 33 years. In that capacity, he has left his mark on many important areas of American constitutional law as well as on the lives of those who had the privilege of serving with him. He was a warm hearted colleague who will be missed by all who knew him.

Conclusion

There are many reasons for those of us who serve in the Judiciary to take pride in our accomplishments in 1997. It was a year in which a Judiciary composed of fewer judges took on an increased workload. We are all indebted to the senior judges in our country who have contributed greatly to meeting the demands placed on the Judiciary. The American public continues to hold the Judiciary in high regard. The American Judiciary continues to command respect abroad. Representatives of other judicial systems frequently visit our courts, and from my conversations with them it is clear that there is international recognition of an able, independent federal Judiciary in this country. Let us strive to uphold this splendid tradition as we go forward toward the millennium.



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Congress Opens Second Session with Judiciary Business

The second session of the 105th Congress began in late January with a great deal of focus on a continuing item of business from the first session—judicial nominations and confirmations. Following the Chief Justice's year-end message warning that high levels of vacancies would erode the quality of justice, members of Congress and the media turned their attention to the issue. When Congress reconvened on January 27, the President sent 12 judicial nominations for consideration. The Senate voted to confirm four pending Article III judgeship nominees within a week. The Senate Judiciary Committee also held hearings for five nominees in the first week of February.

Meanwhile, look for resolution—or at least action—in the second session on some of the key bills of interest to the Judiciary introduced in the first session.

The Judicial Reform Act of 1997, H.R. 1252, which was initiated as a congressional response to so-called judicial activism, is expected to be considered by the full House Judiciary Committee early in the second session. Last session, the Judiciary made its opposition known to several of the bill's provisions in letters to committee members and in testimony by Judicial Conference representatives at hearings. One provision that would provide that a three-judge court hear applications for injunctions regarding laws adopted by state-wide referenda originally was introduced by Judiciary Committee member Representative Sonny Bono (R-CA), who died in January. Other provisions would allow "peremptory challenges" of judges in civil cases, and allow transfer for resolution of complaints of judicial misconduct to a circuit other than that where the complained-against judge sits.

Representatives Howard Coble (R-NC), chair of the House Judi-

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Retired Supreme Court Justice Byron R. White

Members Named to Commission

The five members of the Commission on Structural Alternatives for the Federal Courts of Appeals have been appointed by Chief Justice William H. Rehnquist. The members are retired Supreme Court Justice Byron R. White, Judge Gilbert S. Merritt (6th Cir.), Judge Pamela Ann Rymer (9th Cir.), Judge William D. Browning (D. Ariz.), and N. Lee Cooper, Esq., of Birmingham, Alabama.

At an organizational executive session in mid-January, the commission elected White as chair and Cooper as vice chair. As authorized by statute, the commission ap-

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Judge Gilbert S. Merritt (6th Cir)

Judge William D. Browning (D. Ariz.)

Judge Pamela Ann Rymer (9th Cir.)

N. Lee Cooper, vice-chair

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pointed Daniel J. Meador, the James Monroe Professor of Law Emeritus at the University of Virginia, as Executive Director. The commission expects to hold public hearings on future dates yet to be determined.

Congress created the commission in November 1997 with the enactment of the Commerce, Justice, State, the Judiciary, and Related Agencies Appropriations Act of 1998. The statute creating the commission represents a compromise between the actions of the House, which had approved a larger, longer-term commission, and the Senate, which had passed a bill to split the Ninth Circuit.

Congress has directed the commission to study the present division of the United States into several judicial circuits as well as the structure and alignment of the federal court of appeals system, with particular reference to the Ninth Circuit. The commission is required to make recommendations for "such changes in circuit boundaries or structure as may be appropriate for the expeditious and effective disposition of the caseload of the Federal Courts of Appeals, consistent with fundamental concepts of fairness and due process." The commission's report is to be submitted to the President and Congress by December 19, 1998.

White served as an associate justice of the Supreme Court of the United States from 1962 until he retired in 1993. Merritt has served as the chief judge of the Sixth Circuit and as chair of the Executive Committee of the Judicial Conference. Rymer served as a district judge in the Central District of California before being appointed to the Ninth Circuit. Browning has served as chief judge of the District Court for the District of Arizona and as a member of the Judicial Conference. Cooper is the immediate past president of the American Bar Association (1996-1997) and is a partner in the law firm of Maynard, Cooper & Gale in Birmingham, Alabama.

An office for the commission has been established in the Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20544.

Lawsuit Seeks to Restore COLAs

Twenty U.S. court of appeals and district court judges have filed a class action suit in the U.S. District Court for the District of Columbia (*Williams v. United States*) seeking to restore cost-of-living adjustments (COLAs) denied to the Judiciary from 1994 to 1997. The lawsuit claims congressional denial of annual COLAs provided under the Ethics Reform Act of 1989, coupled with inflation, have led to an unconstitutional erosion of judicial compensation. The constitutional claim, according to the lawsuit, is based on Article III, section 1, which provides that a judge's compensation may not be reduced.

Neither the Judicial Conference nor any of its committees is involved with or has endorsed this litigation, and, historically, the Conference does not take positions on litigation. The Conference supports annual and automatic cost-of-living adjustments for U.S. judges, members of Congress, and top executive branch officials.

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ciary Subcommittee on Courts and Intellectual Property, and Ranking Minority Member Barney Frank (D-MA) are expected to introduce a new version of H.R. 2294, the Federal Courts Improvement Act of 1997. Early consideration of the bill is anticipated.

Consideration of proposals addressing victims' rights may occur early in the session, and the Judiciary will be watching closely to see if Congress pursues the constitutional amendment or the statutory approach. If action is taken on victims' rights, the Judiciary prefers a statutory approach.

The Senate is likely to take up a proposed juvenile crime bill, perhaps early in the session. In December, Administrative Office Director Leonidas Ralph Mecham wrote to congressional leaders on behalf of the Judicial Conference expressing the Conference's concerns with the bill, S. 10, including the growing trend to federalize offenses traditionally within state criminal justice systems. At its September 1997 session, the Judicial Conference affirmed that its long-standing position that federal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts is particularly applicable to the prosecution of juveniles. The House passed its juvenile crime bill in the first session.

The Senate Committee on Veterans Affairs is expected to consider the Veterans Employment Opportunities Act of 1997, S. 1021. An identical bill, H.R. 240, was passed by the House in the last session. The bill would require the Judicial Conference to promulgate Judicial branch regulations providing a preference to certain veterans in appointments and in reductions in force. The Judicial Conference also would be required to promulgate redress procedures for aggrieved veterans to enforce these rights. A hearing likely will be held on the bill in March.

The proposed litigation settlement with tobacco companies, which has been in the news, probably will generate congressional legislation to implement the agreement—and the Judiciary is watching this action closely. Three bills have been proposed already and more are likely to come. The Conference Committee on Federal-State Jurisdiction has been reviewing such implementing legislation to see how the courts would be affected. The chances of congressional enactment of a tobacco settlement this session are uncertain.

The Judiciary also is watching property rights legislation, specifically two House bills, H.R. 1534 and H.R. 992.

H.R. 1534, the Private Property Rights Implementation Act, is intended generally to expedite access to the federal courts for property rights claims. It prevents federal courts from abstaining in such cases where no state law claim is alleged and specifies when government action is sufficiently final to make the claim ripe for adjudication. A related measure has been introduced in the Senate as S. 1256. The Judicial Conference is expressing its concerns regarding this legislation, which the House already has passed.

The Tucker Act Shuffle Relief Act of 1997, H.R. 992, would grant concurrent jurisdiction over claims arising out of agency action alleged to constitute a Fifth Amendment taking. In such cases, the Court of Federal Claims would be given the power to grant equitable and declaratory relief when appropriate. (The Judicial Conference previously has expressed concerns with a similar provision.) All appeals in these cases, whether tried in the district court or the Court of Federal Claims, would be before the U.S. Court of Appeals for the Federal Circuit. The bill has been reported favorably by the House Judiciary Committee.

The Federal Judgeship Act of 1997, S. 678, was introduced in the last session on behalf of the Judicial Conference. The bill would create 12 permanent and 5 temporary court of appeals judgeships and 24 permanent and 12 temporary district court judgeships, and give Article III status to the judgeship authorized for the Commonwealth of the Northern Mariana Islands. It is uncertain whether action will be seen on this bill.

In the last session, the Judicial Conference also asked Congress to create 18 new bankruptcy judgeships. The House passed such legislation, H.R. 1596, in July 1997. It is expected that a similar bill to create bankruptcy judgeships soon will be introduced in the Senate. However, Senator Charles E. Grassley (R-IA), the bill's sponsor in the Senate, most likely will provide for fewer bankruptcy judges, and add provisions limiting bankruptcy judges' non-case related travel and requiring annual reports to Congress regarding such travel.

Both the House and the Senate also are considering bankruptcy reform legislation that may require the AO to collect and disseminate more statistics on bankruptcy.

The Judiciary could face a second year of no funding for the courthouse construction program. While the President's budget for FY99 does not include money for courthouse construction, the AO is working with members of Congress and the General Services Administration to find a source of funding to continue the program.

Second Report Sent to Congress on the Optimal Utilization of Judicial Resources

"The mission of the federal courts is to preserve and enhance the rule of law by providing to society a just, efficient, and inexpensive mechanism for resolving disputes that the Constitution and Congress have assigned to the federal courts."

The Long Range Plan for the Federal Courts

The Judiciary has completed the second *Report to Congress on the Optimal Utilization of Judicial Resources*, an update of the first report issued in November 1996. The report highlights how the Judiciary has streamlined operations, increased the use of technology, and ensured resources are deployed appropriately and used efficiently. The publication responds to congressional appropriations committees requests. The full report is available on the Judiciary's Internet website at www.uscourts.gov.

Judicial Resources and Court Staff

The Judiciary has implemented many policies and processes to ensure that judges are used efficiently and effectively. These include the following:

Article III and Bankruptcy Judgeships

❑ Amending the biennial district judgeship survey to include a determination of whether certain vacancies should remain unfilled or should be recommended for elimination.

❑ Encouraging circuit judicial councils to fill vacant bankruptcy judgeships only when needed to ensure the continued effective operation of the bankruptcy system in each district.

❑ Adopting a Conference policy that will give greater consideration to the establishment of temporary Article III judgeships.

Senior and Recalled Judges

❑ Fostering the use of senior and recalled bankruptcy judges as a lower-cost resource for meeting workload demands.

Sharing Judgeships, Shifting Workloads

❑ Sharing of judgeships between districts to address workload needs without adding positions.

❑ Extending the Ninth Circuit's pilot project designed to balance disparate bankruptcy caseloads within a circuit by transferring adversary proceedings in Chapter 7 cases to districts with lighter workloads.

Court Personnel

❑ Continuing the practice of giving courts significantly less funding than required to hire the full complement of people dictated by the staffing formulas.

❑ Identifying business practices that have the potential to result in more efficient and effective operations under the Methods Analysis Program, which has covered eight functional areas and yielded nearly 600 improved work practices.

Automation and Technology

The Judiciary is aggressively exploring and implementing, through automation and technology, ways in which to lower costs and improve service. These efforts offer greater productivity, better services, swifter disposition of cases, and/or lower future year increases in non-personnel operating costs. Examples include

Videoconferencing

❑ Implemented the prisoner civil rights videoconferencing project in 18 district courts in 30 locations, with plans to expand this program to an additional 16 districts in 20 additional locations by the end of fiscal year 1998, which reduces travel, reduces the security risk of transporting prisoners, offers efficient scheduling, and enhances access to the courts.

Satellite Broadcasting

❑ Using nationwide satellite broadcasting capability to deliver broadcasts of five court administration and management training seminars in 1997 to a viewing population of over 5,000, with plans for about 50 broadcasts in 1998.

Video and Computer-Based Training

❑ Using computer-based programs to provide training more economically, for example training for a new automated case-tracking module in probation and pretrial services offices was computer based, which reduces by approximately half the direct cost of a conventional instructor-led training program.

Electronic Case Files

❑ Exploring the costs and benefits involved with receiving electronic case filings and using electronic case files to reduce manual tasks, reduce space requirements for paper storage, and improve overall service with more up-to-date records and easier access.

Electronic Public Access Programs

❑ Expanding the type and quality of public access services, including a

new Public Access to Court Electronic Records (PACER) service allowing users to identify all cases throughout the country in which a particular party is involved.

Electronic Courtroom Technologies

❑ Collecting information on the use of electronic technologies in 14 courtrooms to assess the advantages and disadvantages of using the technologies.

Telephone Interpreting

❑ Expanding the number of court sites offering telephone interpreting services to achieve greater savings.

Automated Administrative Systems

❑ Implementing a new financial system; a compensation payments system for panel attorneys; a human resources management information system; an integrated library system; and a jury management system.

Space and Facilities

The Judiciary made further progress in containing rent costs and in reducing its existing space inventory. Reductions for 1996 and 1997 avoid $13 million in future annual rent costs. Other efforts include the following:

Courtroom Sharing Policy

❑ Adopting a Conference policy requiring a courtroom for each active district judge, which allows judges to dispose of cases expeditiously and set firm trial dates that promote settlements.

❑ Encouraging judicial councils to develop a policy on sharing courtrooms for senior judges and visiting judges.

Facilities for Non-Resident Officers

❑ Adopting Conference criteria and a two-step analysis process for circuit judicial councils to use when determining whether to establish or maintain a facility without a resident judge.

Revisions to the *U.S. Courts Design Guide*

❑ Making numerous changes in the *United States Courts Design Guide* that are expected to reduce building construction costs by about 5 percent for an average-size project, and changes and clarifications that likely will produce more cost avoidances.

Sharing Courthouse Facilities with States

❑ Developing specific instructions and procedures to help courts share facilities with state and local governments.

Defender Services

Containing defender services program costs remains a high priority for the Judiciary. Efforts include the following:

❑ Establishing the new Subcommittee on Federal Death Penalty Cases of the Judicial Conference Committee on Defender Services to explore issues related to the cost and quality of defense representation in federal death penalty cases.

❑ Adopting a policy urging each circuit judicial council to establish a special process for the review of any state death penalty habeas corpus cases in which attorney compensation exceeds $100,000.

❑ Imposing minimum average caseload-per-attorney ratios for defender organizations representing habeas petitioners, and implementing improved record-keeping and reporting practices for these organizations.

❑ Encouraging courts to require counsel to submit, ex parte, proposed litigation budgets for court approval before commencement of the representation and employing case management techniques commonly used in complex civil litigation.

❑ Completing a major defender services cost study in response to a congressional inquiry that will explain reasons for annual changes in defender services program costs and present a series of concrete recommendations for savings.

Probation and Pretrial Services

The Judiciary saves the government considerable resources through its home confinement program. In FY97, an average of 4,700 offenders were under home confinement on a daily basis. If placed in prison, these individuals would have cost the government $69 to $106 million. The Judiciary's efforts also include

❑ Testing mobile computing applications at two court sites that keep officers in touch with home offices while providing immediate access to information about those they are supervising.

Other Major Economy-Related Efforts

Other major economy-related efforts include work to simplify how the Judiciary derives and distributes courts' non-personnel resource requirements for recurring operating expenses; improved case processing statistics that allow courts to compare performance; and rigorous and effective audits, reviews, investigations, and assessments that in FY97 included over 70 court program unit reviews, and about 300 consulting and technical assistance reviews. The Judiciary recently completed an assessment of financial training needs throughout the courts and identified a number of areas where more training is needed.

Guam Court Weathers Typhoon Paka

The double eye wall of Typhoon Paka roared across the territory of Guam on December 16, bringing torrential rains and some of the highest wind gusts ever recorded. The Federal Emergency Management Agency (FEMA) reported that flooding and winds destroyed at least 3,000 homes and damaged nearly half of the island's 31,000 homes. A day after the typhoon struck, President Clinton declared a major disaster existed in Guam and ordered federal aid to supplement territory and local recovery efforts.

The island "truly looks like a war zone," reported Mary Lou Michels Moran, clerk of court for the District of Guam, but fortunately most of the homes on Guam are concrete and survived, although many lost roofs and windows. Meanwhile, the federal courthouse facilities, primarily housed in the Pacific News Building with federal defenders' offices in the First Hawaiian Bank Building in downtown Agana, sustained mostly water and wind damage to ceilings, carpets, and furniture.

Moran and Peter Wolff, in the federal public defender's office in Hawaii, were in touch with the Administrative Office by phone and e-mail almost as soon as the typhoon had passed. While FEMA and General Services Administration teams flew to Guam, literally to help pick up the pieces, the AO's Disaster Response Team in Washington, D.C., tried to anticipate court needs following the typhoon—from lost paychecks to repair and replacement of equipment.

The Disaster Response Team is drawn from the AO's Space and Facilities, Human Resources, and Court Administration Divisions, and other divisions as necessary. William Lehman, chief of the Space and Facilities Division, is in charge of coordinating the team's work when disaster strikes a federal courthouse, in concert with the assistance given by other courts and the circuit. The AO team does not replace or duplicate FEMA's efforts, which has coordinating responsibility for federal agencies in all disasters. "The Disaster Response Team originated with the bombing of the Alfred P. Murrah Building in Oklahoma City," said Lehman, "which also damaged the nearby U.S. Courthouse and the Old U.S. Post Office Building, both with court facilities. At that time, an AO team was sent to Oklahoma to organize counseling for court employees, coordinate court administration activities, and evaluate facilities and equipment needs." In the months that followed, the team also helped identify funding for replacement computers and reimbursement for employees' uninsured loss of clothing and cars.

The District Court for the District of Guam was open for business within days of Typhoon Paka. . . . Within a week repairs had been completed in the courts.

Fortunately, no court employees or their families were injured in the typhoon. The district court in Guam was open for business within days of the typhoon, but on a half-day schedule to allow employees time to clean up from the storm. Also, generators were the only source of emergency power after Guam Power Authority was knocked out by the storm.

Within a week, repairs had been completed in the courts, which were mostly limited to ceiling repairs and wet-vacuuming or replacing water-soaked carpets. It is uncertain how badly furniture was water damaged. However, it was an indicator of how well the district court facilities fared that the FEMA Disaster Field Office set up shop in the building. Not as fortunate as buildings in downtown Agana, most court employees' homes were without water for at least six days, and without power for two weeks to one month. "As you can imagine, it was very inconvenient and frustrating," Moran said.

With employees safe and court facilities functioning, the next order of business was to determine if Guam banks could handle electronic funds transfers for court employees' pay. AO Court Services staff checked local banks at which employees had direct deposit accounts, and, although most banks were running on generators, payments were transmitted easily. To be on the safe side, duplicate earnings statements for the last pay period were requested since mailed statements may have been destroyed in the typhoon.

Meanwhile, the AO Disaster Response Team will continue to monitor the steadily improving situation on Guam. "I'm pleased that the AO can pull together its resources and diverse skills to advise and assist courts in times of dire need," said Lehman. "We want courts to know that if disaster strikes, we stand ready to help in whatever way possible."

PLEASE POST

VACANCY ANNOUNCEMENTS

THE THIRD BRANCH

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FEDERAL PUBLIC DEFENDER, Northern District of Florida

The Northern District of Florida seeks qualified applicants for the position of Federal Public Defender for the Northern District of Florida. A review committee will consider applications from all interested persons. Application forms along with more information about the position and necessary qualifications are available from any federal district court clerk in the Eleventh Circuit; or contact Clarence Maddox at 404/335-6535. Salary is currently $104,130 (scheduled for adjustment in January 1998). Applicants should file seven copies of the application with Norman E. Zoller, Circuit Executive, U.S. Court of Appeals, 56 Forsyth Street, NW, Atlanta, GA 30303. **Application deadline: March 19, 1998.**

SUPERVISING U.S. PROBATION OFFICER, District of Utah

The District of Utah is seeking qualified applicants for the position of Supervising U.S. Probation Officer. For information and application procedures, please contact Rae Lynn Alvalle, Personnel Specialist, at 801/524-6524. **Application deadline: March 9, 1998.**

DEPUTY CIRCUIT EXECUTIVE, Fifth Circuit

The Court of Appeals for the Fifth Circuit seeks applicants for the position of Deputy Circuit Executive. The Deputy would report to, and act in the absence of, the Circuit Executive in providing administrative support to the Chief Judge, the Judicial council, and the courts of the circuit. Duties include coordination of the Court of Appeals budget, space and facilities planning, supervision of a circuit-wide automation program, and the conduct of judicial studies. Applicants must possess a minimum of six years' progressively responsible administrative experience, demonstrating an understanding of management and organization, including at least three years in a position of substantial management responsibility; experience in a federal court is preferred. Must possess strong analytical communications and interpersonal skills. Salary: $89,669-$116,567 (target grade JSP 16). Send cover letter, complete resume, and salary history to Gregory A. Nussel, Circuit Executive, U.S. Courts, Fifth Judicial Circuit, 600 Camp Street, Room 300, New Orleans, Louisiana 70130. Contact Donna Busby at 504/589-2730 for a complete job posting. **Application deadline: May 1, 1998.**

PROGRAM AND COMMUNICATIONS MANAGER, Ninth Circuit

The Ninth Circuit, Circuit Executive Office, seeks a creative, energetic, and skilled professional in instructional development, conference planning, presentation design and production, writing, and other communications. Plan and coordinate meetings and conferences, work with hotels and other conference sites on arrangements. Develop audio-visual presentations. Assist in writing/editing newsletters, reports, website information, and other publications. BA required and graduate degree preferred. Minimum 5 years' experience in instructional development, teaching, communications, or training. Good computer skills. Travel required. Salary: up to $50k. Mail resume and salary history to H. Velando, Office of the Circuit Executive, PO Box 193939, San Francisco, CA 94119 or fax: (415) 556-6179.

U.S. MAGISTRATE JUDGE, District of Rhode Island

The District of Rhode Island is accepting applications for a full-time magistrate judge position. Salary: $125,764 per annun. Copies of the full public notice and application forms for the magistrate judge position are available at the Office of the Clerk of the District Court, Room 119, One Exchange Terrace, Providence, Rhode Island 02903. For further information or to obtain a copy of the application form by mail, interested persons may contact the Clerk of the District Court, David A. DiMarzio, at 401/528-5188. **Application deadline: February 27, 1998.**

EQUAL OPPORTUNITY EMPLOYERS

CALENDAR DATES FOR THE THIRD BRANCH

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MARCH

10-11 **Tuesday-Wednesday**
Judicial Conference of the U.S.

16-17 **Monday-Tuesday**
Advisory Committee on Civil Rules

23-25 **Monday-Wednesday**
Workshop for Judges of the Fourth Circuit

26-27 **Thursday-Friday**
Advisory Committee on Bankruptcy Rules

30-April 1 **Monday-Wednesday**
Workshop for Judges of the Eleventh Circuit

APRIL

6-7 **Monday-Tuesday**
Advisory Committee on Evidence Rules

16-17 **Thursday-Friday**
Advisory Committee on Appellate Rules

19-22 **Sunday-Wednesday**
Fifth Circuit Conference

27-28 **Monday-Tuesday**
Advisory Committee on Criminal Rules

27-29 **Monday-Wednesday**
National Workshop for Bankruptcy Judges I

Turning 2000: Planning Now for Compliance

The year 2000 is a turning point for more than the millennium. The year 2000 can be a confusing date to a computer that sees only the last two digits of a year. To some computers and software programs, the year 2000 turns back the clock to 1900.

If the computer and software errors are not rectified, the first day back at work in the new millennium could be daunting. Dress warmly, because you may spend some time outside in the cold while the building's security system, which is set on a timer, is corrected. Taking the elevator? Plan on walking a few flights. Elevators have computer timers too. And once you've made it to the office, you have computer networks and data entry programs, not to mention facsimile machines, telephone systems, voice mail systems, heating and air conditioning systems—all run on time and date programs.

With advance planning, however, this worst-case scenario will never occur. The Administrative Office began notifying courts in 1996 that applications and systems may fail or produce invalid results as it becomes necessary to use the dates of January 1, 2000, or beyond. "The AO is working with the courts to modify computer programs and identify applications that may fail," said Gary Bockweg, chief of the AO's Applications Management and Development Division, who is overseeing the year 2000 compliance effort. "To date, more than 75 percent of all court units have reported that they have examined their programs and either planned the necessary corrections or verified that no problems exist." Each court unit has been requested to provide quarterly updates on its status of year 2000 compliance, including estimates of the cost to fix the problems and when the problem will be corrected.

Fixing the problem can be time-consuming and costly. To date, the AO and the courts have spent approximately $1 million to correct the year 2000 problem. In some programs, every line of code must be examined for date conformity. Adding to the problem of ensuring that all systems are compliant is what Bockweg refers to as a "great diversity of software" throughout the Judiciary. Most of the mission-critical systems are centrally developed and maintained, but many court units also use their own locally developed or locally modified programs, and many use various commercial off-the-shelf products. Even newly purchased software may be questionable, with some programs taking a 2-digit number, and others requiring a 4-digit number. All of it needs to be checked.

Personal computers may not prove to be a problem; most older PCs should cycle out of the system before the year 2000, and new replacement computers will be programmed to handle the year 2000.

As of mid-January, the AO had made the software for the Integrated Case Management System (ICMS) year 2000 compatible and available to the courts. The ICMS software is in use in nearly all appellate and district courts and 70 bankruptcy courts. "We were prepared to use contractors to make this change, but instead we completed the work in-house, in half the estimated time and for significantly less than it would have cost to go to outside contractors," said Bockweg.

Another problem recently in the news has been acceptance of credit cards with a year 2000 expiration date that computers read as an invalid "00." Courts are processing credit cards with expiration dates in the year 2000, generally without incident. When one court experienced a problem, the AO was able to check the program and send a quick fix to the court. But not all credit card problems are within the Judiciary's control; they are actually more likely to arise from programs at a bank or other credit card transaction processing center. This highlights another complexity of the year 2000 problem: even organizations that do a very thorough job of fixing their own problems cannot ensure a totally trouble-free transition into the year 2000.

In addition to assistance from the AO, courts have a ready information source on the Judiciary's internal Data Communications Network, where the Fourth Circuit has posted a wealth of material. The site includes information on UNIX and Unify year 2000 issues and fixes, the General Accounting Office's Assessment Guide, and testing software for personal computers to check for year 2000 compatibility.

Most executive branch agencies have a March 1999 deadline to fix any year 2000 bugs. The judicial branch also is aiming for that deadline. "It gives us the time," said Bockweg, "to fully test our systems and iron out any bugs that may still remain. I'm optimistic. The Administrative Office should make the deadline on the systems it maintains, and, if all the courts review their programs and address the problem adequately, I think the Judiciary will avoid any major problems."

JUDICIAL MILESTONES

Appointed: Ronald Lee Gilman, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Sixth Circuit, November 11.

Appointed: Richard A. Caputo, as U.S. District Judge, U.S. District Court for the Middle District of Pennsylvania, December 15.

Appointed: Frank C. Damrell, Jr., as U.S. District Judge, U.S. District Court for the Eastern District of California, November 28.

Appointed: Jerome B. Friedman, as U.S. District Judge, U.S. District Court for the Eastern District of Virginia, November 25.

Appointed: Dale A. Kimball, as U.S. District Judge, U.S. District Court for the District of Utah, November 24.

Appointed: Norman K. Moon, as U.S. District Judge, U.S. District Court for the Western District of Virginia, November 25.

Appointed: Charles J. Siragusa, as U.S. District Judge, U.S. District Court for the Western District of New York, December 15.

Appointed: Christina A. Synder, as U.S. District Judge, U.S. District Court for the Central District of California, November 24.

Appointed: Jacob P. Hart, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Pennsylvania, November 17.

Appointed: James D. Kirk, as U.S. Magistrate Judge, U.S. District Court for the Western District of Louisiana, December 15.

Appointed: Pamela Meade Sargent, as U.S. Magistrate Judge, U.S. District Court for the Western District of Virginia, December 15.

Appointed: Randall L. Dunn, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Oregon, February 1.

Appointed: Meredith A. Jury, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Central District of California, November 24.

Appointed: Anthony John Metz, III, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Indiana, November 14.

Elevated: Judge H. Robert Mayer, to Chief Judge, U.S. Court of Appeals for the Federal Circuit, succeeding Chief Judge Glenn L. Archer, Jr., December 25.

Elevated: Judge Stanley Marcus, to U.S. Court of Appeals Judge, U.S. Court of Appeals for the Eleventh Circuit, November 24.

Elevated: Judge Marjorie O. Rendell, to U.S. Court of Appeals Judge, U.S. Court of Appeals for the Third Circuit, November 21.

Elevated: Judge Howard D. McKibben, to Chief Judge, U.S. District Court for the District of Nevada, succeeding Chief Judge Lloyd D. George, December 20.

Senior Status: Judge Glenn L. Archer, Jr., U.S. Court of Appeals for the Federal Circuit, December 24.

Senior Status: Judge W. Earl Britt, U.S. District Court for the Eastern District of North Carolina, December 7.

Senior Status: Judge Mariana R. Pfaelzer, U.S. District Court for the Central District of California, December 31.

Resigned: Magistrate Judge Donald E. Beachley, U.S. District Court for the District of Maryland, December 28.

Resigned: Magistrate Judge John Leo Wagner, U.S. District Court for the Northern District of Oklahoma, December 17.

Deceased: Magistrate Judge Timothy M. Boudewyns U.S. District Court for the District of Rhode Island, November 27.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of February 1, 1998

Courts of Appeals	
Vacancies	**22**
Nominees	**15**
District Courts	
Vacancies	**60**
Nominees	**33**
Court of International Trade	
Vacancies	**3**
Nominees	**2**
Courts with "Judicial Emergencies"	**32**

The Article III judgeship vacancy report is available at www.uscourts.gov

lew Members of the Executive Committee Appointed

Chief Justice William H. ehnquist has appointed Judge lph G. Thompson (W.D. Okla.) nd Chief Judge Juan R. Torruella st Cir.) to the Executive Committee the Judicial Conference. The xecutive Committee's members are hief Judge Richard S. Arnold (8th r.), Judge Lloyd D. George (D. ev.), Chief Judge Henry A. Politz th Cir.), and the committee chair, dge Wm. Terrell Hodges (M.D. a.). Administrative Office Director eonidas Ralph Mecham is an ex-ficio member. One committee cancy exists.

The Executive Committee is the nference's senior executive arm, ting on behalf of the Conference tween regular sessions on any atter requiring emergency action, addition to other duties. Among its responsibilities, the Executive Committee reviews the jurisdiction of Conference committees, prepares proposed discussion and consent calendars for the meetings of the Conference, and establishes and publishes procedures for assembling agendas and schedules of events in preparation for Conference sessions. The Chief Justice makes all appointments of Judicial Conference committee chairs and members.

Judge Ralph G. Thompson (W.D. Okla.)

Chief Judge Juan R. Torruella (1st Cir.)

ustice Blackmun ebuts in pielberg Movie

Who better to play a Justice of the preme Court than the real article? etired Supreme Court Justice arry A. Blackmun made his nematic debut playing the cameo le of Justice Joseph Story in the ephen Spielberg movie, *Amistad*. Story did in the original Su-eme Court case, *United States v. nistad*, Blackmun delivered the urt's 1841 decision in the movie. e movie *Amistad*, while dealing th the issue of slavery, also ustrated the importance of judicial dependence. Despite the influence a sitting President of the United ates and pressure brought by a reign monarch, the U.S. District ourt in Connecticut and the Supreme Court were free to make their decisions based entirely upon the merits of the case. In the photo above, Justice Blackmun is flanked by Director Stephen Spielberg (photo left) and actor Anthony Hopkins (photo right), who played former President John Quincy Adams. In 1841, the Supreme Court met in rooms in the Capitol Building, which the movie set recreates.

Assessing the Risks, Judging the Benefits of Automation

Judge Edward W. Nottingham was appointed to the District Court for the District of Colorado in 1989. A member of the Judicial Conference Committee on Automation and Technology since October 1994, he became committee chair in October 1997.

Q: How would you characterize the state of automation in the Judiciary today?

A: We are in the midst of swirling change in the way the Judiciary and other institutions, public and private, conduct their work in this country. Through the Office Automation Program, we have made available some 40,000 computers to courts throughout the country. Over the past three or so years, most of those computers have been networked through the Data Communications Network (DCN). The remainder will be connected by the end of this calendar year.

We're at a point that we need, first, to assess and protect what we have achieved so far. Second, we need to educate ourselves concerning the daily developments in technology and understand how technology can be used and abused.

The DCN links us all together. The weakest link in the country is a link that exposes us all to potential abuse or alteration of information belonging to the Judiciary. We need to be conscious of security, not only by taking actions to protect the network, but also by exercising informed caution about the types of information that we put on the network.

Q: What role do you see your committee playing?

A: I think the role the committee can play is partly an educational one—making sure that the Judiciary has places where judges can learn how to use technology and that judges are informed about the benefits and risks posed by technology. The committee also should have enough technical expertise to assess the new technology and to direct it in a way that's most useful to the Judiciary.

Q: Have judges generally accepted computer technology?

A: It's difficult to speak for all judges. I think the acceptance varies depending upon the court and the judge. I can speak for myself. I think computers and technology have enormous beneficial uses.

I think the way to deal with a fear of computers is to understand how computers can be used and abused. There are means of protecting against many of the abuses.

Q: Where does your own interest in automation come from?

A: Like most members of the committee, I fell into it. I did not have any formal computer education or take a computer course in college. When I was in private practice, the firm I was with made a decision to install personal computers for lawyers who wanted them. I've always been fascinated by gadgets so I proceeded to learn how they operate. When I was appointed to the court, that interest deepened.

Q: Do you have a computer in your chambers?

A: Yes, and I've had a home computer for about 12 years.

Q: How have emerging technologies, such as the Internet and intranet, changed the way the Judiciary does business?

A: An intranet is a network of computers linked together by some connection internal to an entity or institution, such as the DCN. The Judiciary intranet, commonly called the J-Net, is composed solely of those computers on the DCN. By contrast, the Internet is the name used for an unorganized, world-wide assortment of computers that originated with a few universities and governmental entities. It now includes individuals, government institutions, and private institutions. An entity's site on the Internet is wholly insecure and can be reached by anybody who has a modem, computer, and a piece of software called a web browser.

The J-Net has vast possibilities for changing the way the Judiciary does business. The most obvious is a change from paper transmission to electronic transmission. For example, we're in the process of placing in electronic form and putting on the J-Net the *Guide to Judiciary Policies and Procedures*. Those materials and supplements now go out from the AO to the courts in paper form. Somebody has to distribute those materials and keep them current. You're never sure whether you have the latest update or whether you put it in the right place. When the *Guide* is posted on the AO's J-Net site, a person at the AO will do the updates for everyone, saving paper, postage and time. That's just a small slice of what's available on the J-Net. Local rules can be posted. Directories are posted.

The Internet also will change the way the Judiciary does business. Electronic filing may be done by means of the Internet. There's also a considerable amount of information available on the Internet that's useful to people operating the courts.

Q: Are there national guidelines for accessing and using the Internet?

A: In September 1997, the Judicial Conference adopted a policy hat for any personal computer onnected to the DCN, access to the nternet would be achieved only hrough certain gateways approved y the AO pursuant to procedures nd policies promulgated by the utomation committee. (A "gate-vay" is a point of ingress and egress etween the Internet and an entity's nternally networked computers.) he purpose of that policy is to make ure that the information on comput-rs networked together by the DCN protected by the most current, echnologically feasible firewall. (A firewall" is a mechanism that limits ccess to a network from outside.)

There also are IRM bulletins that lk about proper use of the Internet nd suggest that each court establish rmal policies for use. The Judicial onference has adopted a resolution ncouraging local courts to come up ith their own guidelines. Everybody hould understand that Internet use an be monitored, if not by the AO or e gateway administrator, then at the sited websites. A website records oth the number of times somebody as visited and the identity of the sitor. Everyone should understand at, when they go out to visit a site on e Internet, they are leaving foot-rints.

Q: How is the Judiciary safe-guarding security of the diciary's electronic information?

A: The National Security Agency has indicated a willingness to nduct, and already has begun in veral courts, an assessment of the lequacy of computer security easures. With the results of that sessment, we expect to publicize y deficiencies so that courts can ow their vulnerabilities.

Q: As a committee member, you were very involved in the mmittee's electronic courtroom

Judge Edward W. Nottingham (D. Colo.)

initiative and now the study. Can you tell us more about it?

A: The electronic courtroom has a lot of elements. It involves the electronic means of taking the record, either by digital recording or real-time reporting; in-court access to legal research databases such as WestLaw; and in-court access to the CHASER/UNIX case-management database. The electronic courtroom also involves the use of video, document cameras, and CD-ROM technology for evidence presentation.

The electronic courtroom study is an effort to determine the feasibility of procuring and installing these various electronic technologies in courtrooms nationwide. Courts taking part in the study have agreed to gather certain information as to which technology has been found most useful by all participants in courtroom proceedings.

By June 1998 we expect to have preliminary results of the study. By December 1998 or January 1999, the committee expects to be able to make some recommendations on nationwide funding for electronic courtrooms.

Q: Given the great interest in electronic filing, how is the Judiciary, and specifically your committee, moving forward on this initiative?

A: Currently, the committee has provided funds for two prototypes operating in a total of nine courts, including bankruptcy courts and district courts. We're studying the problems involved in implementation. One of the problems with electronic filing is that, of all the initiatives that we talked about, it has the greatest potential for cultural change in the courts. It means that you don't go down to the court to file a paper.

The committee has in place some technical standards for electronic filing. These standards will be refined as a result of the experience of these prototype courts. Eventually other Conference committees will need to make decisions concerning electronic filing—rules changes, for example. Right now, all we're doing is studying in a very limited way the possible problems involved in full implementation.

Q: Are there opportunities to apply electronic technologies to libraries?

A: Yes. The amount of information that is available and the speed with which we can recover that information have both increased dramatically in the last three years or so. Many, if not all, courts of appeals place their opinions regularly on an electronic bulletin board or perhaps their website. An opinion can be accessed immediately.

Most publishers are putting their book libraries on CD-ROM, and this offers another significant advantage. As many as eight users can be on the same page of a CD-ROM at the same time. Shared libraries are a convenient possibility, and we could perhaps save some money on book funds. The committee is going to be studying whether this is feasible.

Distance Learning Workshops Make Best Use of Technology

The Administrative Office is conducting a series of workshops on distance learning to familiarize employees with the new interactive video teletraining studio. The studio contains an Automated Instructor Presentation System (AIPS) for satellite broadcasts and videoconferencing capabilities. In the photo (right), a training class takes part in a videoconferencing demonstration.

Interactive distance learning involves an instructor in one location teaching students in several different remote locations. Distance learning not only provides training to a wider Judiciary staff audience, but it also reduces travel time for students and the instructor, consequently lowering the cost of training each student.

Participants in the workshops are introduced to the training and communications opportunities opened up by the Judiciary's new teletraining studio with its satellite uplink and two-way video-conferencing capabilities. Participants learn not only about the technology, but they also learn how best to apply the technology. Classes are kept deliberately small to increase hands-on training.

THE THIRD BRANCH

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THE THIRD BRANCH

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Judicial Conference Convenes Biannual Meeting

Senator Dale L. Bumpers (D-AR), Chief Judge Richard S. Arnold (8th Cir.) and AO Director Leonidas Ralph Mecham (photo left to right) at the Supreme Court dinner and reception honoring Arnold for his years of service to the Judicial Conference.

The Judicial Conference of the United States received a report at its biannual meeting held this month on the crisis in courthouse construction that is facing the federal Judiciary. Judge Norman Stahl (1st Cir.), chair of the Conference Committee on Security and Facilities, reported that for the second consecutive year it appears that there may be no funds available for federal courthouse construction. If this occurs, the costs of construction will increase, certain

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Federal Judiciary Requests Smallest Budget Increase in 20 years for FY 99

For the third consecutive year the federal Judiciary has reduced its level of growth in both appropriated funds and total obligations and for fiscal year 1999 is asking for the smallest funding increase in 20 years, a representative of the Judiciary told House and Senate budget subcommittees this month.

The reduced level of request means "that our economy and efficiency efforts allow us to provide the level of service expected by the bench, the bar and the public, and . . . by the Congress, but at a curtailed cost," said Judge John G. Heyburn II (W.D. Ky.), chair of the Judicial Conference Budget Committee. Heyburn testified before the Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary and the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies. Also testifying at the House hearing were Leonidas Ralph Mecham, Director of the Administrative Office, Chief Judge Robert C. Broomfield

See **Budget** *on page 4*

Conference continued from page 1

sites may be lost, and costly rents for temporary space will have to be paid.

Stahl had testified the previous week before the House Committee on Transportation and Infrastructure, Subcommittee on Public Buildings and Economic Development (See story on page 5). At the hearing he said, "In view of the current impasse on courthouse construction funding, the costs of courthouses will needlessly increase unless steps are taken to ensure a viable future construction program."

Chief Judges Ralph K. Winter Jr. (2nd Cir.) and Henry A. Politz (5th Cir.) attended the reception and dinner held at the Supreme Court honoring Chief Judge Richard S. Arnold (8th Cir.).

Chief Judge Juan R. Torruella (1st Cir.) and Chief Judge Norma H. Johnson (D. D.C.) were among the Judicial Conference members attending the Supreme Court reception and dinner.

Many court facilities were built more than 50 years ago and have become unsafe and overcrowded. However, the Judiciary has little recourse since its role in the planning and construction of courthouses is limited because it does not have independent authority to lease, construct, plan, or design space.

In recent years the Judiciary has conducted a continuous review of design standards to identify less costly methods of meeting functional requirements; convened jointly with GSA a private sector panel of architects, engineers, and construction industry professionals to suggest ways of reducing construction costs; and addressed the impact of reducing the ratio of courtrooms to judges and the potential for closure of underutilized facilities.

In other action the Conference:

- Agreed to support legislation that would reduce from 30 to five the number of days of attendance required by jurors to hear one case in order to be eligible for additional fees. The juror attendance fee, which is set by statute, was increased from $30 to $40 a day in 1990. While the fee has never been intended to support or replace salaries, it is intended to provide a minimal level of compensation for jurors' time and effort fulfilling their civic responsibilities. Nevertheless, for some individuals and in particular those who serve on

Committee to Study Propriety

May a judge presiding over a trial participate directly in settlement discussions with the parties? Does it make a difference if the trial is before a jury rather than the judge? And do local rules permitting the practice, have any bearing on the propriety of the judge's action? These and other similar questions will be studied by the Judicial Conference Committee on Codes of Conduct, whose duty it is to provide advice on the application of the Code of Conduct for judges and other judicial branch employees. The Department of Justice, Civil Division, recently raised the issue with the Judicial Conference Executive Committee.

lengthy trials, jury service is a real financial hardship. As a result, the Conference is endorsing legislation that would provide that after a juror has served five days, the judge may authorize an additional $10 a day fee. Out of 8,427 completed jury trials in FY 96, 1,908 lasted for five days or more while only 50 lasted longer than 30 days.

Resolved to seek vigorously a cost-of-living adjustment for federal judges, members of Congress, and top officials in the executive branch for 1999. The Conference also agreed to continue to seek the repeal of Section 140 of P. L. 97-92, which requires special congressional action for judicial salaries to increase. Further, the Conference announced its support for the revitalization of a federal salary-fixing entity similar to the former Commission on Executive, Legislative, and Judicial Salaries (known as the Quadrennial Commission).

During the two decades leading up to the Ethics Reform Act of 1989, the Quadrennial Commission played a significant role in easing some of the problems caused by salary compression. With the Ethics Reform Act, Congress effectively scrapped the commission and substituted a Citizens' Commission consisting of six appointees of the three branches of government and five randomly selected citizens. Since the creation of the new commission, no money has been appropriated for it, and Congress and the President have never appointed their members. The leaders of all three branches of government received a 2.3 percent COLA in 1998, the first such adjustment since January 1993.

The following is the text of the Judicial Conference resolution honoring Chief Judge Richard S. Arnold

The Judicial Conference of the United States notes with deep regret the departure from its ranks of our esteemed friend and colleague the Honorable Richard S. Arnold, Chief Judge of the U.S. Court of Appeals for the 8th Circuit and a member of this body since 1992.

Recognized throughout the Judiciary for his gifted intellect, integrity, and statesmanlike demeanor, Judge Arnold has contributed selflessly and immeasurably to the administration of the federal court system. From his leadership of the Conference's Budget Committee to his dedicated service on the Executive Committee, he has demonstrated unwavering good judgment and has earned our utmost respect and gratitude.

Judge Arnold is a gracious and warmhearted individual who does not hesitate to exercise his keen, dry wit in a manner that is always uplifting and constructive. He is an invaluable asset to the Judiciary and a valued friend. We will sorely miss him at Conference sessions, but look forward to his significant future contributions to the Judiciary.

It is our pleasure to pay tribute to Judge Richard Arnold and to express our sincere appreciation for his friendship and for his countless accomplishments in the administration of justice.

- Approved a process to be included in the biennial judgeship surveys for determining when to recommend that a court of appeals vacancy not be filled or the position be eliminated. Given the unique nature of the caseloads of the U.S. Court of Appeals for the D.C. Circuit and U.S. Court of Appeals for the Federal Circuit, they are not part of the newly approved process. Last year the Conference adopted a similar approach regarding district court vacancies.

- Adopted a policy stating that if a federal judge uses a state facility to conduct a federal proceeding, the judge remains bound by Judicial Conference policies, including the policy on cameras in the courtroom. In addition, the Conference agreed that when a state court is using a federal court facility for a state court proceeding, Judicial Conference policy regarding cameras in court shall govern.

Budget continued from page 1
(D. Ariz.), a member of the Budget Committee, and Federal Judicial Center Director Judge Rya W. Zobel.

Senate Subcommittee Chairman Judd Gregg (R-NH) sought Heyburn's views on how to hold down defense costs in capital cases.

In the House hearing, Subcommittee Chairman Harold Rogers (R-KY) questioned the number of court security officers requested by the Judiciary for FY 99 and the apparent disproportionate expenditure of defender services monies by California district courts for habeas corpus representations.

For FY 99, the Judiciary is requesting $4.1 billion in obligational authority, which is 6.7 percent more than provided for FY 98. Of the requested 6.7 percent increase, 5 percent is to fund current services and 1.7 percent is to cope with the anticipated increase in workload, which is out of the Judiciary's hands.

"This restrained request comes in spite of a growing workload being placed on the courts," Heyburn said. "With the exception of civil filings, which are projected to decline slightly, the workload estimates used to develop the fiscal year 1999 budget continue to grow."

Heyburn described the steps the Judiciary is taking to achieve savings in staffing, defender costs, and space and facilities.

Staffing: The Judiciary has implemented cost-conscious policies to address the need to establish or eliminate Article III, bankruptcy, and magistrate judgeships, and to appoint or transfer judges in those positions. To hold down the number of court personnel needed, a multi-year effort is underway to identify business practices that have the potential to result in more efficient operations.

Space and Facilities: The Judiciary continues to pursue the sharing of courtrooms by senior judges, revisions to the *U.S. Courts Design Guide* to reduce construction costs, the possible closing of additional facilities that do not have a resident judge, and the implementation of a space reduction incentive program.

(left to right) FJC Director Judge Rya W. Zobel, Chief Judge Robert C. Broomfield (D. Ariz.), Judge John G. Heyburn II (W.D. Ky.), and AO Director Leonidas Ralph Mecham testified at the House hearing on the Judiciary's fiscal year 1999 budget.

Defender Services: Last month the Judiciary transmitted to Congress a comprehensive analysis of the Defender Services program by independent consultant Coopers & Lybrand, L.L.P. The report found that the overall costs of the program have been skewed by a relatively new phenomenon in the federal system—death penalty prosecutions and, in particular, a few very expensive cases. If these cases are excluded, the report found that the average cost of the remaining cases grows by a rate roughly equivalent to inflation.

The Fiscal Year 1999 Request

The Judiciary's FY 99 request of $4.1 billion includes $3.2 billion in appropriated funds and $300 million in other funding sources such as fee collections to supplement its appropriation.

The bulk of the Judiciary's budget request is for salaries and expenses. A total of $3.2 billion is requested for this activity in FY 99. Over 70 percent of the requested increase is needed to fund uncontrollable adjustments such as inflation and rent increases. The remainder is primarily to fund new magistrate judge positions and court support personnel to handle increases in workload.

A total of $392 million is requested in FY 99 for the Defender Services program to provide representation to indigent defendants eligible under the Criminal Justice Act. The request includes a $5 per hour rate adjustment for private panel attorneys in those districts that do not receive the $75 per hour compensation rate. In many cases, the rates currently paid panel attorneys are an impediment to the attraction of qualified attorneys.

For court security, the FY 99 request is $179 million. In addition to inflation, the requested increase would fund 168 additional court security officers to provide basic security in existing, new, and renovated facilities and would provide for cyclical replacement of weapons and explosives screening systems and equipment.

For the fees of jurors, the FY 99 request is $70 million. The requested increase would fund inflationary adjustments and an increase in jury days.

Judiciary Urges Congress to Fund Courthouse Construction

Aging and obsolete court facilities, inadequate space, and yet another fiscal year with no funding to continue the courthouse construction program are creating an intolerable situation for the federal courts, a representative of the Judicial Conference told a House subcommittee this month. Judge Norman H. Stahl (1st Cir.) appeared before the House Committee on Transportation and Infrastructure, Subcommittee on Public Buildings and Economic Development, to express Conference concerns and urge Congress to reprioritize the President's FY 99 budget submission to free funding for courthouse construction. Stahl is the chair of the Conference Committee on Security and Facilities

"Most existing court facilities were built over 50 years ago and are now seriously obsolete," Stahl testified. "It is usually impossible to modify these facilities to provide the additional space needed for the increasing numbers of judges and staff. Moreover, many of these antiquated buildings pose serious security risks for jurors, witnesses, court employees, and judges. . . Finally, many of these old buildings cannot be equipped with the technology now necessary for the functioning of the modern-day federal court." Stahl also pointed to the enormous increase in the workload of the federal courts in recent years, and the need for additional judgeships to handle the work, which in turn has increased the need for more space.

Any expectation by the Judiciary, however, that the General Services Administration would be able to supply the space has been disappointed, he told the subcommittee, by the sudden policy reversal of the President's Office of Management and Budget (OMB). "We now find ourselves in the intolerable situation of a projected second year with no funding for courthouse construction."

Judge Norman H. Stahl (1st Cir.) appealed to Congress for courthouse construction funding.

Stahl outlined to the committee the steps the Judiciary has taken to reduce overall cost and increase the efficiency of new courthouses. The new *U.S. Courts Design Guide*, the result of a comprehensive review, is expected to reduce building construction costs by about 5 percent ($2 million) for an average-size project. The Conference also has adopted a policy requiring a courtroom for each active district judge, ensuring that cases going to trial are disposed of expeditiously. The Conference has encouraged every judicial council to develop a policy on courtroom sharing by senior and visiting judges. Meanwhile, the Judiciary continues to review and update project priorities.

Stahl told the subcommittee that the Judiciary welcomes the opportunity to work with Congress. Said Stahl, "In view of the current impasse on courthouse construction funding, the costs of courthouses will needlessly increase unless steps are taken to ensure a viable future construction program."

Fiscal Year 1999 Proposed Projects

The courthouse projects in the following cities would have been included in the President's FY 99 budget submission.

Construction:

Brooklyn, NY
Denver, CO
Laredo, TX
Jacksonville, FL
Wheeling, WV
Greeneville, TN
Savannah, GA

Design

Biloxi-Gulfport, MS
Eugene, OR
Springfield, MA
Little Rock, AR
Cape Girardeau, MO
Orlando, FL

Site

San Diego, CA
San Jose, CA

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VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 30 Number 3 March 1998

COMMUNITY AND EDUCATIONAL OUTREACH MANAGER, Administrative Office of the U.S. Courts

The Office of Public Affairs, Administrative Office of the U.S. Courts, seeks applicants to manage the Judiciary's community and educational outreach program to improve public awareness of, and working relationships with, the federal courts. Applicants must have one year of specialized experience, which is in or directly related to the position. Salary range: $55,969-$103,756. For additional information on job opportunity #98-OPAF-049 contact Mary Ann Geinzer or Mary Carson at 202/273-2777. **Application deadline: April 24, 1998.**

U. S. BANKRUPTCY JUDGE, Eastern District of Texas

The U.S. Court of Appeals for the Fifth Circuit seeks applications from all highly qualified candidates for a 14-year appointment as a U.S. bankruptcy judge for the Eastern District of Texas. The judgeship, stationed in Tyler, will require regular overnight travel to Beaumont. The selection process will be confidential and competitive. The annual salary is $125,764. Persons interested in applying should notify in writing Gregory A. Nussel, Circuit Executive, U.S. Court of Appeals, Fifth Circuit, 600 Camp Street, New Orleans, Louisiana 70130, for qualification standards and an application form. **Application deadline: May 1, 1998.**

CLERK OF BANKRUPTCY COURT, Northern District of Oklahoma

The U.S. Bankruptcy Court of the Northern District of Oklahoma is seeking qualified applicants for the position of Clerk of Court. A minimum of 10 years of progressively responsible administrative experience in public service or business is required. Qualified persons are invited to submit an original and three copies of a letter of application, resume, and narrative statement. Send to: Dana L. Rasure, Chief Judge, U.S. Bankruptcy Court, Northern District of Oklahoma, 224 South Boulder Avenue, Room 122, Tulsa, Oklahoma 74103-3015 **Application deadline: April 17, 1998.**

CLERK OF BANKRUPTCY COURT, Eastern District of Missouri

The U.S. Bankruptcy Court for the Eastern District of Missouri is seeking qualified applicants for the position of Clerk of Court. A minimum of 10 years of progressively responsible administrative experience in public service or business, which has provided a thorough understanding of organizational, procedural and human aspects of managing an organization are required. Qualified persons are invited to submit an original and two copies of a resume and an application letter to James J. Barta, Chief Judge, U.S. Bankruptcy Court, One Metropolitan Square, 211 North Broadway, 7th Floor, St. Louis, MO 63102-2734. **Application deadline: May 1, 1998.** The position will remain open until filled.

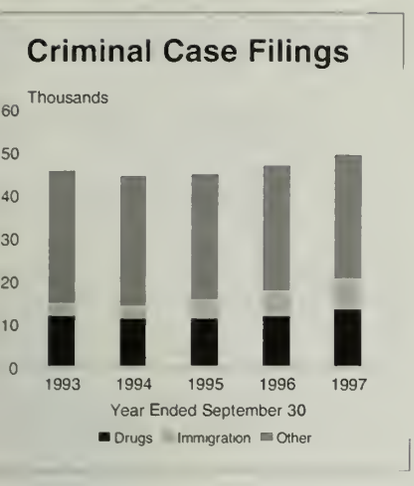
CIRCUIT MEDIATOR, Eleventh Circuit

Applications are being sought for a circuit mediator position in Tampa, Florida. The incumbent will preside at mediation conferences in selected civil cases on appeal. Duties include leading discussions of the procedural and substantive legal issues involved, conducting economic analyses of a case's settlement value, and probing for each party's interest in an effort to help the parties create and explore options to continued litigation. To qualify, an applicant must have mediation training and experience. For full requirements and application procedures, contact Cheryl Vessels, Personnel Specialist, at (404) 335-6202. Starting salary: $72,000 to $85,000 (CL 31), depending upon experience. **Application deadline: April 30, 1998, or until filled.**

DIRECTOR OF JUDICIAL EDUCATION, Federal Judicial Center

Federal courts' education and research agency seeks a Director of its Judicial Education Division. Salary in 1998 is $118,748. For a detailed announcement, visit our website at http://www.fjc.gov or send an e-mail to personnel@fjc.gov. Applicants must send a letter explaining qualifications for the position, with a resume or OF-612, to Personnel Office Announcement #98-13, Federal Judicial Center, Thurgood Marshall Federal Judiciary Building, One Columbus Circle, N.E., Washington, D.C. 20002-8003. To ensure full consideration, applications must be received by **May 1, 1998.**

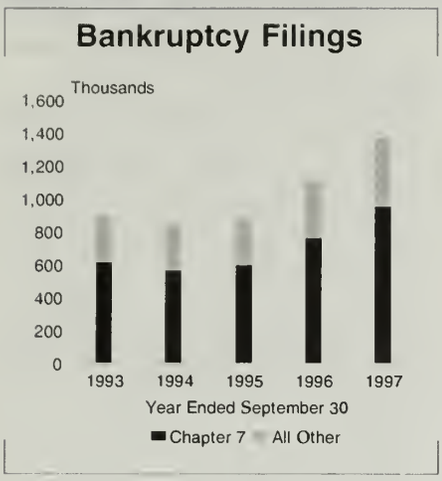
EQUAL OPPORTUNITY EMPLOYERS



gs grew 5 percent to 50,363. Filings r authorized judgeship therefore reased from 74 to 78 cases. Defennt filings climbed to 70,201, a higher mber than the total criminal cases ed because many cases include ultiple defendants. The criminal ngs increased in 1997 because of gher totals for drug and immigran cases, the results of initiatives by e Department of Justice along the uthwest border districts. Most of ese cases were disposed of in dist courts by guilty pleas, so the ge increase in filings did not trans- to an increase in criminal appeals. Drug, fraud, and immigration filgs accounted for 57 percent of all minal cases and for 63 percent of criminal defendants, a 2 percente point increase in both categories er 1996. Filings of drug cases mbed 13 percent to 13,656, while ngs of drug defendants rose 8 perit to 25,885—record high levels for s offense. Immigration case filings e 21 percent to 6,677, while the mber of defendants in immigran cases grew 20 percent to 7,328. ud case filings increased for the rd consecutive year, with a 3 perit growth in 1977 consisting pririly of fraud filings associated h false claims and statements. me of these cases were related to migration prosecutions and health e fraud.

Weapons and firearms filings reined at 1996 levels, after declining percent in 1996.

Bankruptcy Filings



Bankruptcy filings in fiscal year 1997 again hit an all-time high for any 12-month period in the Judiciary's history. Bankruptcy filings totaled 1,367,364, a 23 percent increase over fiscal year 1996. The surge in bankruptcy filings most likely was linked to the rise in consumer debt as a percentage of personal income. Filings rose in 93 of the 94 districts, with 82 courts experiencing growth greater than 15 percent. The Central District of California remained the district reporting the largest number of filings in the country with 115,686, an increase of 19 percent. Of the total number of bankruptcy filings for the 12-month period ending September 30, 1997, there were 958,045 Chapter 7 filings, an increase of 26 percent over the 761,652 filings in the same period in 1996. The next largest group of filings were Chapter 13 filings at 397,097, an 18 percent increase over the 336,615 filings in the same period in 1996. Chapter 11 filings dropped to 11,221 in the 12-month period ended September 30, 1997, down from 12,554 in the same period in 1996. Chapter 12 filings also fell slightly, going from 1,096 in 1996 to 966 in 1997.

Business filings totaled 54,252, up 1 percent from the September 30, 1996, total of 53,520. Non-business filings totaled 1,313,112, up 24 percent. Non-business filings have constituted an increasingly larger percentage of overall bankruptcy filings for more than a decade, climbing from 82 percent in 1984 to 96 percent in 1997.

Probation and Pretrial Services

On September 30, 1997, a total of 91,434 persons were under the supervision of the U.S. probation system, a 3 percent increase over the number reported for 1996. The growth was the result of an 11 percent jump in the number of persons serving terms of supervised release following their release from prison. In comparison, the federal prison population totals over 116,000.

Persons serving terms of supervised release totaled 51,036, up from 45,911 on September 30, 1996. Probation officers prepared 172,806 investigative reports in 1997.

In 1997, the number of defendants in the pretrial services system increased 9 percent, to 69,283. This growth was consistent with the rise in criminal defendant filings in the district courts. Pretrial services officers interviewed 7 percent more defendants (up 3,553) and prepared 9 percent more bail reports (up 5,620) than in 1996. Prebail reports constituted 92 percent of the bail reports prepared. The courts released 30,757 defendants into the custody of pretrial services officers and 27,785 of these defendants also received restrictive conditions. The most frequently ordered restrictive conditions were substance abuse testing and treatment. House arrest and electronic monitoring were other restrictive conditions.

JUDICIAL MILESTONES

Appointed: Barry G. Silverman, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, February 6.

Appointed: Charles R. Breyer, as U.S. District Judge, U.S. District Court for the Northern District of California, January 1.

Appointed: Bruce W. Kauffman, as U.S. District Judge, U.S. District Court for the Eastern District of Pennsylvania, January 20.

Appointed: Carlos R. Moreno, as U.S. District Judge, U.S. District Court for the Central District of California, February 6.

Appointed: Rodney W. Sippel, as U.S. District Judge, U.S. District Court for the Eastern District of Missouri, January 27.

Appointed: Whitney Rimel, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of California, February 4.

Appointed: James K. Bredar, as U.S. Magistrate Judge, U.S. District Court for the District of Maryland, January 26.

Appointed: Richard F. Cebull, as U.S. Magistrate Judge, U.S. District Court for the District of Montana, February 1.

Appointed: Donald P. Dietrich, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Georgia, February 1.

Appointed: Claire V. Eagan, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Oklahoma, January 27.

Appointed: Paul Game, Jr., as U.S. Magistrate Judge, U.S. District Court for the Northern District of Georgia, February 1.

Appointed: Craig M. Kellison, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of California, February 3.

Appointed: Stephen E. Miller, as U.S. Magistrate Judge, U.S. District Court for the Central District of California, January 12.

Appointed: John H. Smith, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Georgia, February 1.

Appointed: Catherine A. Walter, as U.S. Magistrate Judge, U.S. District Court for the District of Kansas, December 8.

Elevated: Judge Edward R. Becker, to Chief Judge, U.S. Court of Appeals for the Third Circuit, succeeding Delores K. Sloviter, January 31.

Elevated: Judge Marilyn L. Huff, to Chief Judge, U.S. District Court for the Southern District of California, succeeding Judith N. Keep, January 24.

Elevated: Judge Graham Calder Mullen, to Chief Judge, U.S. District Court for the Western District of North Carolina, succeeding Richard L. Voorhees, January 28.

Senior Status: Judge James H. Alesia, U. S. District Court for the Northern District of Illinois, February 1.

Senior Status: Judge Peter C. Dorsey, U.S. District Court for the District of Connecticut, January 2.

Retired: Senior Judge John A. Mackenzie, U.S. District Court for the Eastern District of Virginia, January 30.

Retired: Senior Judge Stanley J. Roszkowski, U.S. District Court for the Northern District of Illinois, January 31.

Retired: Bankruptcy Judge Richard T. Ford, U.S. Bankruptcy Court for the Eastern District of California, February 3.

Retired: Bankruptcy Judge Helen S. Balick, U.S. Bankruptcy Court for the District of Delaware, January 31.

Retired: Magistrate Judge Robert M. Holter, U.S. District Court for the District of Montana, January 31.

Resigned: Magistrate Judge James Dennis Hubel, U.S. District Court for the District of Oregon, December 31.

Resigned: Magistrate Judge Barry Silverman, U.S. District Court for the District of Arizona, February 5.

Resigned: Magistrate Judge Paul M. Rosenberg, U.S. District Court for the District of Maryland, January 25.

Deceased: Senior Judge Frank G. Theis, U.S. District Court for the District of Kansas, January 17.

Deceased: Bankruptcy Judge Sidney Mathew Weaver, U.S. District Court for the Southern District of Florida, January 23.

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JUDICIAL BOXSCORE

As of March 1, 1998

Courts of Appeals	
Vacancies	24
Nominees	16
District Courts	
Vacancies	58
Nominees	29
Court of International Trade	
Vacancies	3
Nominees	2
Courts with "Judicial Emergencies"	31

For Judiciary, Pace of Congress' Second Session is Brisk

With the working days numbered n the second session of the 105th Congress, the concern has been that Congress would not accomplish all that eeds to be done before its projected October adjournment. However, as ar as federal courts are concerned, he legislative pace has been brisk.

In late February, the House assed H.R. 1544, the Federal Agency Compliance Act, and referred the bill to the Senate. The bill generally would prohibit federal gencies from pursuing policies of on-acquiescence in, and relitigation f, precedents established in the federal circuits. In early March, the House passed H.R. 424, legislation hat would make it easier to apply mandatory minimum sentences to ersons convicted of violent or drug-elated federal crimes in which they ossess a gun.

H.R. 992, the Tucker Act Shuffle elief Act of 1997, passed the House n March 12. The bill would grant he district courts and the Court of ederal Claims concurrent jurisdic-ion over claims arising out of gency action alleged to constitute a aking in violation of the Fifth mendment. The plaintiff would lect which court shall hear and de-ermine those claims. The Court of ederal Claims would be given the ower to grant equitable and de-laratory remedies in such cases vhen appropriate. All appeals, vhether from the district courts or rom the Court of Federal Claims, vould be before the U.S. Court of ppeals for the Federal Circuit.

The House Judiciary Committee lso marked up two bills affecting ederal courts: H.R. 2294, the Federal ourts Improvement Act of 1998, nd H.R. 1252, the Judicial Reform Act of 1997. The Judiciary supports H.R. 2294, but opposes seven provisions in H.R. 1252.

H.R. 2294, The Federal Courts Improvement Act of 1998

H.R. 2294, the Federal Courts Improvement Act of 1998, moved rapidly through the subcommittee and full Judiciary committee, thanks to the chairman of the House Judiciary Subcommittee on Courts and Intellectual Property, Howard Coble (R-NC), who assumed a leadership role in bringing the bill through with bipartisan support from ranking minority member Barney Frank (D-MA). Judiciary Committee chair Henry J. Hyde (R-IL) and ranking minority member John Conyers Jr. (D-MI) were instrumental in helping to move the bill through the full committee.

Under Title II of the Federal Courts Improvement Bill, provisions have been included that would clarify regulatory authority pertaining to the Judiciary Information Technology Fund and allow reimbursement of the Judiciary for civil and criminal forfeiture expenses from the Department of Justice.

Under Title III of the bill, contempt authority would be extended to magistrate judges, and magistrate judge positions could be established in the district courts of Guam and the Northern Mariana Islands. Provisions also would establish a place of holding court in the Eastern District of Texas and reauthorize appropriations for the federal substance abuse treatment program.

Title IV would address judicial personnel administration, benefits and protections. One provision would amend the Rule of 80, 28 U.S.C. § 371, to allow, with certain exceptions, Article III judges who have reached the age of 60 with 20 years of service to take senior status. Other provisions would establish firearms training programs for judges who choose to carry firearms and extend judicial authority to carry firearms in nine additional states; allow payment of property damage, theft, and loss claims of jurors; and give the Judiciary authority to prescribe reasonable fees for use of information technology resources provided by the Judiciary for remote access to the courthouse by litigants and the public. Title IV contains a provision allowing the Director of the Administrative Office to designate judicial branch officers to certify payment for goods and services. As amended in committee, Title IV also contains provisions that would authorize three additional permanent district judgeships and one temporary judgeship in the Middle District of Florida, and two temporary judgeships in the Southern District of Florida.

Under Title V, the Criminal Justice Act Amendments, the maximum amounts of compensation for attorneys, and for services other than counsel, would be increased.

H.R. 1252, Judicial Reform Act of 1997

Generally, the Judiciary is concerned with the "reforms" H.R. 1252, the so-called "Judicial Activisim" bill, proposes to make. The Judicial Conference opposes the enactment of sections 2, 3, 4, 5, 6, 7, and 8 of the bill. However, the Conference favors sections 9 and 10. Following a markup on March 10, a second markup was scheduled for late March.

- Section 2 provides that a three-judge court must hear an application for an injunction restraining, on the ground of unconstitutionality, the enforcement, execution, or operation of a state law adopted by referendum.
- Section 3 would authorize a court of appeals to permit, at its discretion, an appeal by either party from a district court's class action certification decision. This amendment of 28 U.S.C. §1292(b) circumvents action, consistent with the rule-making process established by Congress, by the Con-

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Coble Takes On Task of Overseeing Courts

Representative Howard Coble (R-NC) is chair of the House Judiciary Subcommittee on Courts and Intellectual Property. He has served as a member of the House since 1985.

Q: In the last few years, your role on the Subcommittee on Courts and Intellectual Property has evolved from junior committee member to chairman. How has your perspective changed on issues affecting the federal courts now that your role has changed?

A: I don't think that my perspective on various courts-related issues has changed, insofar as the subcommittee is considering issues that were reviewed in the past and have been resurrected again during my first term as chairman. At the same time, I do feel a greater responsibility as chairman to expedite movement of that legislation that I believe is important and beneficial to the operations of the federal Judiciary. Being chairman means you have to be more process- and results-oriented than when you are a junior member in a minority party.

A: It's not a perfect bill by any means, but H.R. 1252 is a good bill that addresses a limited number of judicial problems in a restrained manner. Former Representative Sonny Bono's contribution to the bill, the requirement that a three-judge panel consider challenges to state laws enacted pursuant to referendum, is a case in point. California citizens were, in my opinion, justifiably upset with the decisions to overturn Propositions 187 and 209; in each case, a single judge rendered the opinion. Having three judges review these challenges is more equitable to voters in that conferring this power on a single man or woman sends an undemocratic message: your vote and those of millions of other citizens don't count; you can be trumped by one person with life tenure.

Another example is Representative William D. Delahunt's (D-MA) contribution to the bill. We had a witness at our hearing who lives in the geographic confines of the Sixth Circuit, a mother whose young daughter was brutally raped and murdered by a man who later benefited from counsel and due process protections—to which he was entitled—but who was lawfully convicted of murder. Tennessee permits capital punishment in these cases, but the man has sat on death row for years. The same judge who handled the man's appeal appropriates all habeas cases in that circuit. No one is executed on his watch. Is that fair to the citizens of Tennessee or to that little girl's mother? So Representative Delahunt came up with the idea at the hearing that we should deny the chief judge of every circuit the ability to reserve habeas cases for a single judge.

The bottom line is that I firmly believe the great majority of federal judges are serious men and women who perform a valuable public service. But sometimes there is abuse in the courtroom or in the chambers, and the Judiciary has not always rushed to correct its mistakes or counsel its brethren. The Constitution gives Congress the right to oversee Article III courts, and I think I would be acting irresponsibly if I shirked this task because it sometimes invites controversy.

Representative Howard Coble (R-NC)

"The Constitution gives Congress the right to oversee Article III courts, and I think I would be acting irresponsibly if I shirked this task because it sometimes invites controversy."

Q: The Judicial Reform Act, H.R. 1252, was introduced last session and was the focus of much debate. Republican leaders support the legislation while the Judicial Conference has opposed several provisions. How do you view the bill?

Q: Your subcommittee considered the Federal Courts Improvement Act, H.R. 2294, last session. Will the legislation move in this session?

A: I introduced H.R. 2294, the Federal Courts Improvement Act of 1997, at the request of the Administrative Office of the U.S. Courts. The Subcommittee on Courts and Intellectual Property held a legislative hearing on the bill on October 9, 1997. The ranking member, Barney Frank (D-MA), and I offered an en bloc amendment to the bill, which was adopted, at the subcommittee markup held on February 26, 1998. The en bloc amendment removed some sections and added some additional proposals from the Administrative Office and other members. H.R. 2294 was reported favorably to the full committee. Representative Frank and I offered an en bloc amendment at the full committee markup on March 3, 1998. The amendment removed two bankruptcy sections, which will best be handled in another venue, and it clarified to what extent the Judiciary may collect fees for the use of electronic technology resources. It is anticipated that H.R. 2294 will be considered on the floor sometime in March.

Q: Your committee has held hearings on H.R. 2603, the Alternative Dispute Resolution and Settlement Encouragement Act. As you know, the Conference supports ADR, with districts free to employ the type of ADR program that is most effective. What is your view of ADR?

A: I am a big supporter of ADR programs. Congress should support programs that help to lessen the federal caseload. The subcommittee plans to consider the bill on March 18, at which time I hope to offer some bipartisan changes to the ADR program by expanding it beyond just arbitration to include such devices as early referral and mediation.

Q: During the first session of the 105th Congress your subcommittee heard testimony regarding the Judiciary's resource needs. What are the prospects for the Judicial Conference's judgeship request in this session of Congress.

A: H.R. 2294, as amended at the Subcommittee markup, included a provision, proposed by Representative Charles Canady (R-FL), which would add three district judges to the Middle District of Florida, two district judges to the Southern District of Florida, and one temporary district judge for the Middle District of Florida.

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ference Advisory Committee on Civil Rules on a similar provision amending Rule 23 of the Federal Rules of Civil Procedure.

Section 4 would amend the Judicial Conduct and Disability Act of 1980 to require that all complaints of judicial misconduct that are not dismissed as frivolous, relating to the merits of a decision or procedural ruling, or not in conformity with the statute, be referred to another circuit for complaint proceedings.

Section 5 would limit a federal court's ability to enter any order or approve any settlement that requires any state, or political subdivision of a state, to impose, increase, levy, or assess any tax for the purpose of remedying the deprivation of a right under the Constitution.

- Section 6 would allow a party to a civil case in a district court to bring a motion to reassign, without cause as a matter of right, the case to another appropriate judicial officer.
- Section 7 would require random assignment of all habeas corpus cases in a given judicial district.
- Section 8 would authorize the presiding judge or justice of an appellate court or the Supreme Court, to allow cameras in the court during court proceedings.

In the first of two scheduled markups of H.R. 1252, amendments were offered to section 8 that, during a three-year pilot program, would give any presiding district court judge the discretion to permit the photographing, electronic recording, broadcasting, or televising to the public of court proceedings, if neither party objected.

- Section 9 provides for delinkage of judges' salaries from those of members of Congress, and repeals Section 140 of P.L. 97-92, which provides that judges receive salary increases only as the result of specific legislative action by Congress.
- Section 10 would create special federal jurisdiction for litigation arising out of a single accident resulting in the injury or death of at least 25 persons alleging damages over $50,000 each. The parties would have to meet the requirement of minimal diversity, and all of the actions arising from a single accident would be consolidated in a single federal court.

Appellate Commission Schedules Public Hearings

The Commission on Structural Alternatives for the Federal Courts of Appeals has scheduled six public hearings to allow interested persons to comment on the commission's work. The hearings will be in the following cities:

Atlanta, March 23; Dallas, March 25; Chicago, April 3; New York, April 24; Seattle, May 27; and San Francisco, May 29.

All hearings are currently scheduled to begin at 9:00 and conclude by 4:30. Contact the commission for the exact hearing locations.

Congress created the commission late last year and charged it with studying the structure and alignment of the federal appellate system, with particular reference to the Ninth Circuit. To assist its work, the commission is interested in obtaining views on whether each federal appellate court renders decisions that are reasonably timely, are consistent among the litigants appearing before it, are nationally uniform in their interpretations of federal law, and are reached through processes that afford appeals adequate, deliberative attention of judges.

At the public hearings, the commission specifically requests that witnesses address the following:

1. What problems or difficulties do you perceive in the federal appellate system's structure, organization, alignment, processes, and personnel that may interfere with its ability to render decisions that meet the above objectives? What criteria or standards can be used to answer this question?
2. What measures should be adopted by Congress or the courts to ameliorate or overcome perceived problems in the federal appellate system or any of its circuits? What are the advantages or disadvantages of any proposed measures?
3. What is working well in the federal appellate courts?

Persons may request to testify at any single hearing by mailing or faxing a one-page letter to the commission stating their interest in the questions identified above, the hearing at which they desire to appear, and if applicable, the name of the organization on whose behalf they will be appearing. The letter must be received by the commission at least 21 days before the hearing date. Persons who are invited by the commission to testify will be expected to submit a written statement of not more than 2,500 words at least five days before the hearing.

Instead of testifying at a hearing, interested persons may submit a statement in writing to the commission anytime before June 1, 1998. Statements should be submitted in hard copy, typed, double-spaced, and also on a computer diskette in a format readable by a standard word processing program.

Letters and statements should be sent to: Commission on Structural Alternatives for the Federal Courts of Appeals, Washington, D.C. 20544.

Phone: 202/208-5055. Fax: 202-208-5102

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Chief Justice Appeals to Congress for Courthouse Construction Projects

Chief Justice William H. Rehnquist has written to House and Senate leadership seeking their assistance in obtaining $500 million the General Services Administration says is necessary to move forward on 14 courthouse construction projects. "These projects," wrote Rehnquist, "are critically needed if the federal courts are to adequately and safely carry out the responsibilities placed upon them by the Constitution and statute." Subsequently, the Senate recommended in its budget resolution that the Appropriations Committee fully fund the courthouse construction program in fiscal year 1999.

The Judicial Conference originally endorsed the need for 14 courthouse projects in FY 98, then did so again for FY 99 in its latest five-year plan of courthouse construction priorities. Although GSA recommended to the Office of Management and Budget

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Judiciary Introduces New Website

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Judiciary Bills See House Action Before Spring Recess

The House faced the prospect of going out for spring recess in April with a flurry of activity in March on Judiciary-related bills. On March 18, the House passed H.R. 2294, the Federal Courts Improvement Act of 1998, but not without some changes to the version approved by the Judiciary Committee. On March 24, the House Judiciary Committee approved H.R. 1252, the Judicial Reform Act of 1997—sometimes referred to as the "Judicial Activism" bill—on a party line vote and ordered the bill reported to the full House. The committee also approved on a voice vote H.R. 3528, the Alternative Dispute Resolution Act of 1998.

Change to Rule of 80 Dropped in House

A voice vote in the House passed H.R. 2294, the Federal Courts Improvement Act, but the version that went to the floor was different from what came out of the House Judiciary Committee. Just before the House vote, an amendment to the "Rule of 80" was dropped due to cost considerations. The amendment to 28 U.S.

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(OMB) that funding be included for the projects in the President's FY 99 budget request, the OMB eliminated the request—even though OMB had previously approved site and/or design money for nine of the 14 projects. This was the second year in a row that the executive branch failed to request from Congress funds required by GSA to design and construct new and expanded facilities for the federal Judiciary.

Judge Norman H. Stahl, chair of the Conference Committee on Security and Facilities, and Administrative Office Director Leonidas Ralph Mecham repeatedly contacted congressional leaders, including appropriations and authorizing committee members, to seek funding for the courthouse projects. The Chief Justice's letter was the latest salvo in the effort to win inclusion of the 14 projects in the budget and authorization of funds.

"The General Services Administration, which is responsible for the design, construction and operation of federal courthouses," Rehnquist wrote, "agrees with the Judiciary that these projects are fully justified and that the projects as proposed are the most economical way to provide the secure and functional space needed to carry out the Judiciary's responsibilities."

The construction projects will replace or augment court facilities, many over 50 years old, that cannot be modified to provide additional courtrooms, chambers and office space required to meet the tremendous growth in workload that has occurred in the Judiciary.

❒ The bankruptcy court in **Brooklyn, New York**, is housed above a drugstore in leased space that routinely leaks, toilets flood and the heating and air conditioning systems fail. Meanwhile, delays in renovating the Post Office building that would house the court have caused decay and deterioration, increasing the cost of eventual restoration.

❒ The lease in the **Biloxi, Mississippi**, court facility terminates in 2003. GSA does not have existing space available to meet the needs of the court and there are serious space, health, and safety problems in the current space.

❒ The district courthouse in **Denver, Colorado**, may have to house judges, staff, and jury assembly functions in separate facilities. Juror pools already are meeting in courtrooms. Delay in funding construction may affect purchase of the planned site.

❒ The district court in **Eugene, Oregon**, has been forced to move all the law clerks, the district court clerk's office, the bankruptcy court, and the probation office out of the courthouse. Security problems pose what the U.S. Marshals Service calls a "life threatening" situation.

❒ The security problems in the district courthouse in **Laredo, Texas**, are described by the U.S. Marshals Service headquarters as among the worst in the nation. In addition, the court, built in 1906, lacks room for a new judge, or facilities to handle a skyrocketing caseload.

❒ The current multi-tenant federal facility in **Springfield, Massachusetts**, has significant security problems. It lacks secure and separate prisoner corridors, courtroom holding cells, and prisoner elevators, with the result that dangerous prisoners move through public corridors with members of the public, witnesses and federal workers.

❒ Any delays in building on the selected site in **Jacksonville, Florida**, will require an increase in the project budget. The city already has committed to moving City Hall to an adjacent site as part of a revitalization of the downtown area.

❒ The court in **Wheeling, West Virginia**, is out of space for additional judges, the clerk's and probation offices, attorney-client conference areas, witness rooms, and alternative dispute resolution suites. Security also is a serious problem.

❒ The **Little Rock, Arkansas**, court will add several judges over the next 10 years, and there is no space for expansion in the existing building.

❒ Currently there are only two courtrooms in the **Cape Girardeau, Missouri**, courthouse to accommodate six judges and a bankruptcy judge. An additional renovated courtroom is too small for criminal trials.

❒ Only one courtroom in the **Greeneville, Tennessee**, courthouse has a jury room or facilities for the jury. There are no witness rooms, attorney conference rooms, or any spaces available for trial participants. The recently acquired annex for one judge can only be used for civil trials and has no security.

❒ There is no room for expansion or growth of any court or court-related agency in **Savannah, Georgia's** current district courthouse, where caseload is expected to swell and additional judges are expected to be added. Prisoners are routinely taken through public corridors.

❒ In the area's booming real estate market, the purchase of the proposed site of a new district courthouse annex in **San Diego, California**, could be jeopardized by delay. Without the annex, staff and court agencies will be forced to function in separate areas throughout San Diego county.

❒ Building sites in suitable areas of **San Jose, California**, are disappearing fast, and delay will limit the ability to acquire a site in close proximity to the existing facility and the utilization of existing courtrooms.

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C. § 371 would have allowed, with certain exceptions, Article III judges who have reached the age of 60 with 20 years of service to take senior status.

Previously, the Subcommittee on Courts and Intellectual Property had dropped several provisions from the bill as introduced, including sections that would have created a Judicial Conference Foundation, amended the Employee Retirement Income Security Act, repealed in-state plaintiff diversity jurisdiction, and transferred responsibility to the Department of Justice for a wiretap report currently prepared by the Administrative Office.

The Clinton Administration weighed-in on the morning of the House floor vote with opposition to provisions to transfer of funds from the Justice and Treasury Asset Forfeiture Funds to the Judiciary to cover certain costs; to transfer employer contributions from the Civil Service Retirement and Disability Fund to a judicial branch courts operation fund when judges elect to switch to the judicial officers' retirement system; to vest magistrate judges with criminal contempt authority in certain instances; and to extend to jurors coverage under the Federal Employees Compensation Act while going to and from jury duty. Despite White House opposition, these provisions remained in the House-passed version of H.R. 2294. The bill now goes to the Senate for consideration by Senator Charles E. Grassley's (R-IA) Judiciary Subcommittee on Administrative Oversight and the Courts.

Cameras in Courts Provision Passes with Bipartisan Support

The House Judiciary Committee completed its mark-up of H.R. 1252, the Judicial Reform Act of 1997, and ordered the bill reported to the full House. A floor vote may occur when Congress returns from its spring recess at the end of the month. The Judicial Conference, which plans to review the entire bill, already is opposed to sections 2, 3, 4, 5, 6, 7 and 8 of the bill. Those sections were examined in the March issue of *The Third Branch.*

Several of the bill's sections were amended in the full committee.

Section 8, the provision giving the presiding judge of an appellate court the discretion to allow cameras in the court during civil and criminal court proceedings, was amended in the full committee to include district

*See **Action** on page 4*

Devitt Award Honors Judge Damon J. Keith

Judge Damon J. Keith (6th Cir.) is the recipient of the 16th Annual Edward J. Devitt Distinguished Service to Justice Award. The award is given annually in recognition of an Article III judge who has achieved an exemplary career and has made significant contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole.

Judge Damon J. Keith (6th Cir.)

Keith has served on the federal bench for 31 years. Among his landmark decisions, he is most cited for the 1972 decision, *U.S. v. Sinclair*, commonly referred to as *The Keith Decision*. In that decision he found that President Richard Nixon and Attorney General John Mitchell could not engage in warrantless wiretap surveillance of three individuals suspected of conspiring to destroy government property because the surveillance was in violation of the Fourth Amendment. The decision was affirmed by the Sixth Circuit and unanimously upheld by the U.S. Supreme Court.

Keith was appointed in 1976 to the U.S. District Court for the Eastern District of Michigan, where he served as chief judge from 1975-1977. He was appointed to the U.S. Court of Appeals for the Sixth Circuit in 1977, and took senior status in 1995. He also has served on numerous Judicial Conference committees, and chaired the Judicial Conference Committee on the Bicentennial of the Constitution.

The Devitt Award is named for the late Edward J. Devitt (D. Minn.). This year's award selection committee consisted of Justice Clarence Thomas (S.C.), Judge Phyllis A. Kravitch (11th Cir.), and Judge Ralph G. Thompson (W. D. Okla.).

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courts. This amendment, with respect to district courts, sunsets three years after the date of the enactment of the bill.

Section 6 was amended in subcommittee and in full committee. The provision originally said any party to a civil case in any district court could bring a motion to reassign the case to another appropriate judicial officer, and that each party would be entitled to one reassignment without cause as a matter of right. As amended in subcommittee, the practice would only be required in the 21 district courts with the largest number of authorized district court judgeships, would sunset five years from the date of enactment, and would require the Federal Judicial Center to monitor the use of the right to bring a motion to reassign and to report annually to Congress on its findings. In the full committee, an additional amendment was adopted that excludes from this section civil actions heard by district courts of three judges.

Section 5 underwent a change of language in full committee. This provision originally said that no district court may enter any order or approve any settlement that requires any state or political subdivision of a state to impose, levy, or assess any tax, unless the court makes certain findings. At subcommittee, the word "requires" was changed to "expressly directs," but in full committee the language was changed back to "requires."

Section 4, a provision that would transfer all complaints of judicial misconduct to another judicial circuit, was amended in subcommittee to allow the chief judge to dismiss complaints as frivolous, as relating to the merits of the case or ruling, or as not being in conformity with the statutory requirements. As passed by the committee, only where a special committee is formed to investigate the complaint would the case be transferred to another circuit.

Sections 9 and 10 are supported by the Judicial Conference. Section 9, which provides for delinkage of judges' salaries from those of members of Congress, and repeals Section 140 of P.L. 97-92, was amended to include administrative law judges. Section 10 creates special federal jurisdiction for litigation arising out of a single accident resulting in the injury or death of at least 25 persons alleging damages over $50,000 each.

ADR Legislation Requires Choices

A number of bills on alternative dispute resolution (ADR) have circulated in the 105th Congress. First, there was H.R. 903, the Alternative Dispute Resolution and Settlement Encouragement Act introduced by Representative Howard Coble (R-NC) nearly a year ago. By October 1997, the bill was replaced by H.R. 2603. Judge D. Brock Hornby, chair of the Judicial Conference Committee on Court Administration and Case Management, testified at hearings on H.R. 2603 before the House Judiciary Subcommittee on Courts and Intellectual Property.

The legislation was replaced, in turn, by H.R. 3528, the Alternative Dispute Resolution Act of 1998, which was marked up by the House Judiciary Committee on March 24.

Under H.R. 3528, district courts would be required under certain circumstances to provide litigants in all civil cases with a choice of alternative dispute resolution processes. The Judicial Conference Committee on Court Administration and Court Management is reviewing H.R. 3528 and will make recommendations to the Judicial Conference or the executive committee, as appropriate.

National Database Developed on Treatment Programs

Every day across the country, federal probation and pretrial services officers make recommendations to federal judges on the appropriate pretrial or post-conviction treatment for defendants. This results in over $46 million being spent annually on treatment through the Substance Abuse Treatment Program, the Mental Health Treatment Program, and the Alternatives to Detention Fund. But until now, there was no way to know which treatments were most successful, or even to fully determine how many clients were receiving which type of treatment. The National Treatment Database was developed to fill that need.

The National Treatment Database (NTD) was developed by the Administrative Office's Federal Corrections and Supervision Division (FCSD) to track national substance abuse and mental health expenditures, while it tracks the impact of treatment on defendants/offenders while on community supervision.

It also allows for the development of performance measures in the areas of substance abuse treatment, mental health treatment or supervision contract expenditures. Following testing for six months in six probation and pretrial services offices, as of May the NTD was ready for use in all district courts.

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THE
FEDERAL JUDICIARY
HOMEPAGE

Revamped Internet Site Eases Access to Judiciary Information

Ever wonder how federal judges re appointed, or how to file a civil ase? Want to know the latest ankruptcy statistics or about job pportunities in the federal Judi-ary? It's all on the new Internet eb site unveiled this month by the udiciary.

The site, located at **ww.uscourts.gov**, offers general formation on the structure of the deral Judiciary; statistics on dicial vacancies, bankruptcies, nd civil and criminal caseloads; nswers to frequently asked ques-ons; and much more.

"Our new web site represents a reat stride in the federal Judiciary's ntinuing effort to enhance and xpand our communications," said eonidas Ralph Mecham, Director the Administrative Office. Whether a lawyer, student, or terested member of the public, I elieve users will find our web site be informative and useful. The deral Judiciary is committed to uilding on available Internet chnology to stay in touch with eople around the country and ound the world."

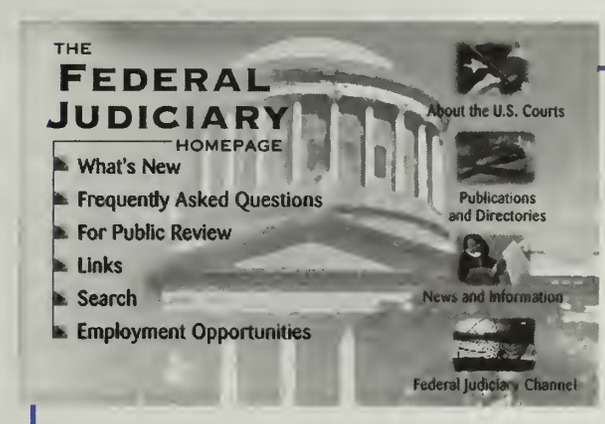
Visitors to the site can access the irectory of Electronic Public ccess Services, a discussion paper n electronic case filing in the deral courts, a report on stan-rd electronic citations, or the *ng Range Plan for the Federal urts*.

There is information on how the diciary utilizes its resources. articles from monthly newsletters, and proposed changes to the *Federal Rules of Practice and Procedure* posted for public review.

Maintained by the Administrative Office, the website breaks down into sections on what's new, news and information, publications and directories, materials for public review, employment, links to court homepages, and the Federal Judiciary Channel. Questions about the federal Judiciary or the web site can be forwarded to the web master via e-mail directly from the homepage. And if you can't find what you're looking for, a search engine will provide results.

The Federal Judiciary Channel uses "push technology" to further improve access to information. Visitors to the channel, once they have registered free of charge, can receive current news at their desktops.

The push software installed by the user performs a periodic check, retrieves the updated information requested by the user, and automatically notifies and sends the new information to the user. News releases, updated judicial vacancy listings, employment opportunities, and other information about the federal Judiciary are now available on the Federal Judiciary Channel.



A Quick Tour of the Judiciary Homepage

- ❒ **What's New:** Check here for all the lastest information, news releases, and updates.
- ❒ **Frequently Asked Questions:** Get answers to the most asked questions.
- ❒ **For Public Review:** Review proposed changes to the Federal Rules of Practice and Procedure.
- ❒ **Links:** Find out which courts nationwide have home pages and visit them.
- ❒ **Search:** Find topics of interest to you in a hurry.
- ❒ **Employment Opportunities:** Where are the jobs in the federal Judiciary? Click here to find out.
- ❒ **About the U.S. Courts:** Everything you've ever wanted to know about the federal Judiciary.
- ❒ **Publications and Directories:** Find Judiciary publications here.
- ❒ **News and Information:** View more information, including news releases and the monthly judicial vacancy list.
- ❒ **Federal Judiciary Channel:** Push technology brings Judiciary news right to your desktop.

GAO Releases Report on Noncase-Related Travel by Judges

The General Accounting Office (GAO) released a report in early March on non case-related travel of Article III judges. Subsequently, Senator Charles Grassley (R-IA) released a statement faulting judges for their travel, saying "many of the trips were to exotic locations and for purposes which appear far removed from judicial work."

The GAO received data on the travel of 64 court of appeals judges in six circuits and 254 district court judges in 34 districts from January 1, 1995, to September 30, 1997. These circuits and districts had either requested additional judgeships or had experienced judgeship vacancies of 18 months or more. The report was requested by Grassley as chairman of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts.

The report does not reach any conclusions nor does it make any recommendations. It shows that the 64 court of appeals judges in the study took a total of 1,463 non case-related trips, encompassing 3,220 workdays during the period January 1, 1995, through September 30, 1997. The 254 district court judges responding in the study took a total of 3,741 non case-related trips encompassing 9,832 workdays during the study period.

The GAO reported the majority of trips, while defined by GAO as non-case-related, were for judicial business. The report says that together, circuit meetings and activities; workshops sponsored by the Administrative Office or Federal Judicial Center; seminars and other activities; trips associated with courthouse construction and renovation; and Judicial Conference meetings and activities accounted for about 68 percent of all trips and about 73 percent of all travel workdays reported for circuit judges, and 86 percent of all trips and about 87 percent of all travel workdays reported for district court judges during the study period. Nearly 98 percent of appellate judge travel and 99 percent of district judge travel were to destinations within the U.S. In addition, almost all of the relatively few trips outside the U.S. were made at the request of the executive branch.

Grassley's statement in response to the report said, "It is unacceptable for district and circuit courts to engage in this much non case-related travel while at the same time arguing they need more judges because they can't get their work done in a timely fashion. Some argue that cases have been delayed solely because of vacancies. This argument doesn't hold water when thousands of workdays are being spent on travel to resort locations around the world."

Grassley gave, as an example, travel by a district judge to Australia to attend a conference sponsored by the Australian Swim Coaches

The Australia Connection

Australian Olympic athlete John G. Davies swims the breaststroke during a national championship in 1951.

The GAO report, and the press release issued by Senator Charles E. Grassley took particular note that a judge from the Central District of California traveled to Australia at the invitation of the Australian Swim Coaches Association. While the report and press statement called this a conference, it was actually a reunion planned by the association of the considerable number of Olympic swimmers trained by Forbes Carlile, a noted Australian coach.

The judge who attended was Judge John G. Davies (C.D. Calif.), a native of Australia. Davies, along with other Australian Olympic swimmers, participated in a tribute to Carlile. Although airfare was paid by the association, Davies paid his own expenses for the five-day trip. Davies also took this opportunity to visit his mother, who still lived in Australia and who was terminally ill. Excluding the Australia trip, his noncase-related business travel averaged only two and a half days per annum during the 33 months covered by the GAO study.

Davies won an Olympic Gold Medal for Australia in the 1952 Summer Olympics in Helsinki, swimming in the 200 meter breaststroke. He also competed in the 1948 Olympics in London.

CALENDAR DATES FOR

THE THIRD BRANCH

Vol. 30 Number 4 April 1998

JUNE

3-4 **Wednesday-Thursday**
Committee on Judicial Resources

3-5 **Wednesday-Friday**
DC Circuit Conference

4-5 **Thursday-Friday**
Committee on Criminal Law

7-9 **Sunday-Tuesday**
Committee on Security and Facilities

8-9 **Monday-Tuesday**
Committee on Administration of the Magistate Judges System

8-12 **Monday-Friday**
Orientation for Newly Appointed District Judges

10-11 **Wednesday-Thursday**
Committee on Automation and Technology

11-12 **Thursday-Friday**
Committee on the Administrative Office

15-16 **Monday-Tuesday**
Committee on Federal-State Jurisdiction

15-17 **Monday-Wednesday**
Committee on Court Administration and Case Management

16-17 **Tuesday-Wednesday**
Committee on the Administration of the Bankruptcy System

18-19 **Thursday-Friday**
Committee on Rules of Practice and Procedure

21-25 **Sunday-Thursday**
Ninth Circuit Conference

22-23 **Monday-Tuesday**
Committee on the Judicial Branch

25-27 **Thursday-Friday**
Fourth Circuit Conference

25-27 **Thursday-Friday**
Tenth Circuit Conference

JULY

1-3 **Wednesday-Friday**
National Workshop for Magistrate Judges I

9-11 **Thursday-Saturday**
Committee on Codes of Conduct

20-21 **Monday-Tuesday**
Committee on the Budget

PLEASE POST

VACANCY ANNOUNCEMENTS

THE THIRD BRANCH

Vol. 30 Number 4 April 1998

U.S. BANKRUPTCY JUDGE, District of Connecticut

The District of Connecticut is accepting applications for the position of U.S. bankruptcy judge. The person selected will maintain chambers in New Haven, CT. The term of office is 14 years. Salary: $125,764. Qualifications include admission to practice before the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico; memberships in good standing in every bar in which membership is held; and at least five years of legal practice experience. Application forms are available from the Office of the Circuit Executive, U.S. Courthouse, 40 Foley Square, Room 1702, New York, NY 10007. Telephone: (212) 857-8700. Fax: (212) 857-8710. **Application deadline: May 15, 1998.**

U.S. MAGISTRATE JUDGE, Northern District of Texas

The U.S. District Court for the Northern District of Texas is accepting applications for a full-time magistrate judge position at Lubbock, Texas. Salary: $125,764 per annum. Copies of the full public notice and application forms for the magistrate judge position are available at the Office of the Clerk, U.S. District Court, 1100 Commerce Street, Room 14A20, Dallas, TX 75242-1003. **Application deadline: May 15, 1998.**

DEPUTY COURT ADMINISTRATOR, Eastern District of Michigan

The District Court for the Eastern District of Michigan is accepting applications for the position of court administrator/clerk of court. Qualifications include a bachelor's degree, 10 years of progressively responsible administrative experience in business or public service, at least six of which must have been in a position with substantial management responsibility. Candidates must possess a strong knowledge of automation systems, strong analytical and interpersonal skills, including the ability to communicate effectively both orally and in writing. Salary: JSP-14-16 ($67,427—$120,924) A copy of the complete vacancy announcement may be obtained by calling (313) 234-5065. Submit a cover letter and resume to Personnel Office, U.S. District Court, 814 Theodore Levin U.S. Courthouse, Detroit, MI 48226. **Application deadline: May 1, 1998**.

EQUAL OPPORTUNITY EMPLOYERS

Association. (See sidebar.) He also pointed out judges from the Central District of Illinois who made trips to Russia in 1995, and judicial meetings by other judges in Israel, Great Britain, Poland, and Panama.

On behalf of federal judges, the Administrative Office responded to Grassley's statement, saying "It would neither be fair nor prudent to suggest that no United States judge should use his or her unique expertise to provide assistance to foreign governments, lecture to lawyers and law students, attend judicial education programs, or assist in the administration of the federal courts. Doctors, members of Congress, and most other professionals travel as part of their jobs. Their profession and those they serve benefit from this."

The *Code of Conduct for United States Judges* acknowledges that judges are "specially learned in the law. . . [and] in an unique position to contribute to the improvement of the law, the legal system, and the administration of judges." The code states that to the extent their time permits, judges are encouraged to speak to bar associations and other groups dedicated to the improvement of the law.

In addition, Congress mandates certain meetings, including circuit judicial councils, the Federal Judicial Center Board, and the Judicial Conference. In other instances, executive branch agencies, such as the Agency for International Development, invite and pay for judges to travel as official representatives of the U.S. government to train judges in emerging democracies. The United States has an interest in the establishment of independent, fair, and stable justice systems throughout the world.

Finally, like other professionals, judges attend continuing education and training programs to develop and maintain their proficiency and expertise.

NTD continued from page 4

The impetus for the NTD came in 1992, with a FCSD review of the Substance Abuse Treatment Program. The recommendations that came out of that review included the implementation of a management information system, which was subsequently endorsed by the Judicial Conference Criminal Law Committee.

In stage one of a two-stage program, court officers use the Probation and Pretrial Services Automated Case Tracking System (PACTS) that is already in place in each district, and the Substance Abuse Treatment Module to enter data on every defendant in their program. Included in this data are the treatment plan, the associated costs, the client's demographic profile, and the outcome of the case, i.e., how the defendant responded to the assigned treatment. "At this stage," says Timothy Cadigan, Automation Branch chief at the Administrative Office, who helped to develop NTD, "the module helps a probation chief track the success of a specific treatment plan or contract in their district, and make decisions on funding. For example, group counseling is cheaper, but is it more effective? A report generated from the Substance Abuse Treatment Module data could provide direction on that question."

"The NTD can be used to compare the effectiveness of programs in major cities or to create cost/benefit reports on different treatment possibilities. . ."

On the administrative side, the module checks for errors in data entry, and, because it is linked to the conditions set by the judge in each case, it also verifies bills for services.

The second stage is initiated when the data from the 150 individual pretrial services and probation offices is electronically transmitted each quarter, via PACTS, to the Administrative Office, where it is compiled in the NTD. The data will be used to produce reports on the effectiveness of substance abuse, mental health, and alternatives to detention programs; develop performance measures for these programs; and provide cost/benefit analyses at the national level. "Right now, we have insufficient data on the methodologies being used across the country, "said Cadigan. "But the NTD can be used to compare the effectiveness of programs in major cities or to create cost/benefit reports on different treatment possibilities, for example in-patient versus outpatient treatment, or counseling by a psychologist versus peer counseling."

The result may be the ability to provide improved pretrial release and sentencing recommendations for judicial officers, better allocation of resources to successful programs, and documentation that additional funding will be put to the best possible use. Said Cadigan, "I think it will change how the whole program is managed."

JUDICIAL MILESTONES

Appointed: Margaret M. Morrow, as U.S. District Judge for the Central District of California, March 9.

Appointed: Richard W. Story, as U.S. District Judge, U.S. District Court for the Northern District of Georgia, February 10

Appointed: Manuel Barbosa, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Illinois, March 23.

Appointed: Ellen A. Carroll, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Central District of California, February 17

Appointed: Dennis Hubel, as U.S. Magistrate Judge, U.S. District Court for the District of Oregon, January 1.

Appointed: Glenda E. Edmonds, as U.S. Magistrate Judge, U.S. District Court for the District of Arizona, February 19.

Appointed: Paul D. Stickney, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Texas, March 2.

Elevated: Judge William H. Albritton, III, to Chief Judge, U.S. District Court for the Middle District of Alabama, succeeding Myron H. Thompson, February 8.

Elevated: Judge Terry J. Hatter, Jr., to Chief Judge, U.S. District Court for the Central District of California, succeeding William Matthew Byrne, Jr., March 1.

Elevated: Bankruptcy Judge James D. Gregg, to Chief Judge U.S. Bankruptcy Court for the Western District of Michigan, succeeding Laurence E. Howard, March 4.

Senior Status: Judge Kenneth K. Hall, U.S. Court of Appeals for the Fourth Circuit, February 24.

Senior Status: Judge Joseph M. McLaughlin, U.S. Court of Appeals for the Second Circuit, March 20.

Senior Status: Judge Wm. Matthew Byrne, Jr., U.S. District Court for the Central District of California, February 28.

Senior Status: Judge James C. Cacheris, U.S. District Court for the Eastern District of Virginia, March 30.

Senior Status: Judge William J. Rea, U.S. District Court for the Central District of California, March 31.

Senior Status: Judge Miriam Goldman Cedarbaum, U.S. District Court for the Southern District of New York, March 31.

Senior Status: Senior Judge John Garrett Penn, U.S. District Court for the District of Columbia, March 31.

Retired: Magistrate Judge Joan S. Brennan, U.S. District Court for the Northern District of California, February 28.

Deceased: Circuit Judge Donald Stuart Russell, U.S. Court of Appeals for the Fourth Circuit, February 22.

Deceased: Magistrate Judge William M. Dale, Jr., U.S. District Court for the District of Oregon, March 9.

THE THIRD BRANCH

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Photograph on page 12 by Franz Jantzen, Collection of the Supreme Court of the United States.

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JUDICIAL BOXSCORE

As of April 1, 1998

Courts of Appeals	
Vacancies	2
Nominees	1
District Courts	
Vacancies	5
Nominees	2
Court of International Trade	
Vacancies	
Nominees	
Courts with "Judicial Emergencies"	2

Judicial Fellows Named for 1998-99 Term

The Judicial Fellows for the 1998-99 term have been lected. They are Nancy G. Miller, who will serve at the dministrative Office; Mary L. Clark, who will serve as a llow at the Federal Judicial Center; Christie S. Warren, ho will serve at the Supreme Court; and Paul E. Fiorelli, ho will serve at the U.S. Sentencing Commission.

The Judicial Fellows Program begins each year in late ugust or early September. Patterned after the White ouse and Congressional Fellowships, it provides fellows ith an opportunity to study first-hand the administra- e machinery of the federal Judiciary. Typically, Judicial llows are outstanding individuals from diverse profes- ons with proven records of accomplishment.

Nancy G. Miller is senior counsel in the Office of olicy Development at the Department of Justice. After graduating with highest honors from the University of California at San Diego, Miller earned a law degree at the University of California's Boalt Hall School of Law, where she was managing editor of the *Ecology Law Quarterly*. Following law school, Miller was an associate with firms in New York and Washington, D.C., a trial attorney for the U.S. Department Health and Human Services, and a senior attorney at e Administrative Conference of the United States.

Mary L. Clark is a teaching fellow and supervising torney in the Appellate tigation Program, eorgetown University w Center. A magna m laude graduate of yn Mawr College, ark received her law gree from Harvard w School, where she as executive editor of *rvard Civil Rights—vil Liberties Law Review.* ter graduation, Clark as a law clerk for Judge John C. Godbold (11th Cir.), then joined the Equal Employment Opportunity Commission as an appellate attorney. Her publications include "Legal Education and Coeducation: A Historical Vantage," and "The Founding of the Washington College of Law: The First Law School Established by Women for Women."

Christie S. Warren is the international project coordinator for the Judicial Mentor Program in Haiti. She is responsible for writing curricula and training materials for international judges and judicial educators acting as mentors, and she served as a liaison with partners in the U.S. and Haiti. She has worked extensively with the Cambodian Court Training Project and has served as a consultant for programs in Guatemala, Vietnam and Rwanda. Warren graduated with distinction from the University of California, Berkeley and earned a law degree at the University of California, Davis, where she was an extern for the Intergovernmental Maritime Consultative Organization.

Paul E. Fiorelli is a professor of legal studies at Xavier University in Cincinnati, Ohio. After receiving a B.A. in economics from St. Lawrence University, Fiorelli earned both a law degree and an M.B.A. from the University of Dayton. After two years of private practice, Fiorelli joined the Xavier faculty as an assistant professor of accounting and law, then served as the Arthur Anderson Business Ethics Coordinator and the Business Law Coordinator. He has completed extensive research on sentencing guidelines and ethics, and he is co-author of *The Federal Sentencing Guidelines: Guidelines for Internal Auditors.*

Ethics Advice Is This Committee's Work

Judge A. Raymond Randolph (D.C. Cir.) chairs the Judicial Conference Committee on Codes of Conduct. He was appointed to the U.S. Court of Appeals for the District of Columbia in 1990.

Q: The Committee on Codes of Conduct has a wide range of responsibilities. In your view, what are the most valuable services the committee provides?

A: The committee provides advice in writing or sometimes by telephone to judges and judicial employees who are covered by the Codes of Conduct and the Ethics Reform Act. We do not adjudicate or investigate. We rely on the judge or the employee for information about the particular problem facing them, and then we try to provide some guidance about what the Code of Conduct or the Ethics Reform Act says with respect to the problem. We do not respond to inquiries from third parties.

Through training programs and through articles in various publications, we try to alert judges and judicial employees to applicable ethical standards. After six years on this committee, my impression is that, by and large, judges and judicial employees are very conscientious about trying to follow the standards that are set forth in the code and in the Ethics Reform Act. If a problem crops up, it is more often than not simply due to lack of knowledge about what is demanded or expected of the judge or the employee. The committee believes very strongly that the more information that is available, the fewer mistakes that will be made.

Q: How do judges first learn about the Codes of Conduct?

A: It's part of the training program for new judges. There are various videotapes that have been made over the years, including an excellent one by Walter Stapleton, a former chairman of the committee in the late 1980s and early 1990s.

Q: Where did the Code of Conduct for United States Judges originate?

A: The impetus for the code dates back to 1969 when Judge Clement Haynsworth was nominated for the Supreme Court. The Senate nomination hearings revealed that Judge Haynsworth held stock in some of the parties in cases on which he sat. It is not entirely clear whether that was a violation of any rule or statute. At the time we had no formal code of conduct and the standard for recusal was very loose. It basically said that if the case would substantially affect a particular financial interest of the judge then the judge would have to step down. It was not clear in Judge Haynsworth's situation whether any of the cases he handled rose to that level. Because of the controversy, a committee of the American Bar Association set out to draft a new code for the Judiciary. Three years later, in 1972, the ABA adopted a model code for judges. A year later the Judicial Conference revised that code and adopted it for the federal Judiciary. Congress enacted one part of the code (Canon 3C) into law; this section deals with recusal responsibilities.

Q: There are codes of conduct for judicial employees. Can you tell us about them?

Judge A. Raymond Randolph (D.C. Cir.)

A: Several codes of conduct emerged after the Judicial Conference's adoption of the code f judges. One was for circuit executiv and another was for clerks of court and so on. They were modeled afte the code for judges, but there were some inconsistencies in them, and interpretations were difficult becau of the various nuances of language. Beginning in about 1993, this comm tee started looking to see whether w could consolidate all these codes in one for all judicial employees, exclu ing federal public defender staff. W adopted this consolidated code two years ago.

The language and the organizati of the code for judicial employees follows fairly closely the code for judges. It is not nearly as strict in terms of political participation, for example, or outside activities, wher judges are held to a much different standard.

Q: What kinds of ethical advi can judges obtain from the committee, and how do they obtain

A: We have a representative from each circuit on the committee, plus one bankruptcy jud and one magistrate judge. The easie way for a judge to get quick informa tion is to call either the circuit repre sentative or me. To obtain an adviso

pinion, the judge should send me a tter asking for advice. We receive nywhere from 70 to 90 of these ritten requests every year, some ery detailed. When we get a written quest for advice we respond in riting and try our best to do so uickly. Any response goes out over e chairman's signature and repre- nts the views of the entire commit- e.

Q: Is this procedure available to judicial employees also?

A: Yes. As a matter of our operating procedure we don't ve advice by telephone if the estion being asked isn't fairly well ttled in prior committee advice, or advisory opinions, or in the regula- ns. If it is a new matter we haven't oken on before, then we ask the dividual to send a letter so that all members of the committee can rticipate in the advice that we give. It is also important to know that the de of conduct itself is framed in ms of what judges and employees ght to do, not what they must do. that respect, it's truly an ethical de, and it is very precious and very e. We ought to do everything to eserve it. We have set very high ndards and judges, and employees nscientiously try to adhere to them. hen our committee gives advice 're not binding anybody. A judge ree to disagree with our interpreta- n of the code of conduct. What we to do is simply guide the judge or employee and give them our best dgment.

Q: What guidance can you offer to judges about how best to avoid ethical pitfalls?

A: The first thing a new judge can do is attend one of the training programs or get the videotape of the code of conduct program. He or she ought to have some passing acquaintance with the code. Then a brand new judge ought to be very careful about setting up a comprehensive recusal list, whether it is administered by the judge directly or by the clerk's office. You can't have an appreciation of what should go on that list unless you know what the requirements are with respect to prior affiliations or financial interests, and matters of that sort. And then a judge has to update his or her recusal list periodically.

Q: Your committee issues advisory opinions. Can you describe some of the recent opinions?

A: In addition to giving private advice by letter on a confidential basis, we periodically publish advisory opinions. These are compiled in the "Red Book," which is Volume II of the *Guide to Judiciary Policies and Procedures*. There are more than 90 of those opinions. We publish when we detect a significant problem or a question that is being asked over and over again. For example Advisory Opinion No. 64 deals with when judges can hire as law clerks the children of other judges. We also have an advisory opinion (No. 93) dealing with political activities, giving guidelines for judicial employees about what they should and shouldn't do.

Q: What subjects are on the agenda for the committee in the next few years?

A: The advisory opinions I just mentioned date back more than 25 years. After reviewing them several years ago, the committee believed some of them could be misleading because they discuss matters that are now governed specifically by the Code of Conduct, or by the Ethics Reform Act. We've undertaken a project to update, revise, or sometimes delete the 90-some advisory opinions. We're right at the end of that project now.

One of the recurring questions we receive is about judges' participation in seminars run by various organizations within the executive branch. The question is under what circumstances can a judge speak, teach or participate when the only people invited are members of the executive branch? We are putting together an advisory opinion on that recurring topic now. We're also looking at the ban on honoraria, which was struck down in part by the Supreme Court—and then declared completely unenforceable by the Attorney General. That obviously has implications for the members of the Judiciary. Also, we're undertaking increased training initiatives for judges, and to some extent for law clerks. It's important for judges to make certain their new law clerks are attuned to the ethical standards that apply to them.

In addition to Judge Randolph, questions within the following circuits may be referred to the listed committee members:

1st Cir. - Judge Joseph A. DiClerico, Jr. (D. N.H.)
2nd Cir. - Judge Carol Bagley Amon (E.D. N.Y)
3rd Cir. - Judge Thomas N. O'Neill, Jr. (E. D. Pa.)
4th Cir. - Judge William L. Osteen (M.D. N.C.)
5th Cir. - Judge Jerry L. Buchmeyer (N.D. Tex.)
6th Cir. - Judge James H. Jarvis (E.D. Tenn.)
7th Cir. - Judge Daniel A. Manion (7th Cir.)
8th Cir. - Judge Stephen N. Limbaugh (E.D. Mo.)
9th Cir. - Judge Mary M. Schroeder (9th Cir.)
9th Cir. - Judge Spencer M. Williams (N.D. Calif.)
10th Cir. - Judge David M. Ebel (10th Cir.)
11th Cir. - Judge J. L. Edmondson (11th Cir.)
Fed. Cir. - Judge Daniel M. Friedman (Fed. Cir.)
Bankruptcy Judge Peter W. Bowie (S. D. Calif.)
Magistrate Judge Gerald B. Cohn (S. D. Ill.)
Marilyn J. Holmes (Counsel to the Committee)

Judicial Conference of the United States, March 10, 1998

Seated: *(L-R) Chief Judge Juan R. Torruella (1st Cir.), Chief Judge Ralph K. Winter, Jr. (2nd Cir.), Chief Judge Edward R. Becker (3rd Cir.), Chief Judge J. Harvie Wilkinson III (4th Cir.), Chief Justice William H. Rehnquist, Chief Judge Henry A. Politz (5th Cir.), Chief Judge Boyce F. Martin, Jr. (6th Cir.), Chief Judge Richard S. Arnold (8th Cir.), Chief Judge Stephanie K. Seymour (10th Cir.).*
Standing, Second Row: *Judge Joseph A. DiClerico, Jr. (D. NH), Chief Judge Charles H. Haden II (S.D. W.Va.), Judge Lloyd D. George (D. Nev.), Chief Judge H. Robert Mayer (Fed. Cir.), Chief Judge Procter Hug, Jr. (9th Cir.), Chief Judge Joseph W. Hatchett (11th Cir.), Chief Judge Harry T. Edwards (D.C. Cir.), Judge James M. Rosenbaum (D. Minn.), Judge Ralph G. Thompson (W. D. Okla.), Leonidas Ralph Mecham, Director, AO.*
Standing, Third Row: *Judge William H. Barbour, Jr. (S.D. Miss.), Judge Peter C. Dorsey (D. Conn.), Judge Julia Gibbons (W.D. Tenn.), Chief Judge Donald E. Ziegler (W.D. Pa.), Judge Robert L. Miller, Jr. (N.D. Ind.), Judge Wm. Terrell Hodges (M.D. Fla.), Chief Judge Norma H. Johnson (D. D.C.), Chief Judge Gregory W. Carman (Int'l Trade).*

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THE THIRD BRANCH

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House Passes "Judicial Activism" Bill

Late last month, the House considered the Judicial Reform Act of 1998, H.R. 1252, ending nearly seven hours of often rancorous debate with a voice vote to pass the bill.

When introduced last year, H.R. 1252 became known as the "judicial activism" bill. House Republicans drafted the bill in response to what they called "activist" judges, who overstepped their judicial bounds. During the House floor debate, Representative Tom Delay (R-TX), an ardent supporter of the bill and an outspoken critic of "judicial activism," said, "The system of checks and balances so carefully crafted by our Founding Fathers is in serious disrepair and has been for years. This bill takes a very necessary step to bring the courts back into constitutional order."

Representative Howard Coble (R-NC) called the bill a "restrained but purposeful effort to combat specific areas of abuse that exist within the federal judiciary." House Judiciary Committee Chairman Henry J. Hyde (R-IL) told the House he did not think there was anything in the bill "that is hostile at all to the notion of the Third Branch of government and its very important role in the functioning of our democracy."

Democrats questioned the motives of the supporters of the bill. "We have the right wing not liking the fact that the court sometimes enforces constitutional rights. . . So they come forward with a bill which is mostly a nuisance and interference and a derogation from the efficiency of our court system," argued Representative Barney Frank (D-MA). Representative Maxine Waters (D-CA) called H.R. 1252 an "odious bill," and Representative Howard L. Berman (D-CA) argued that, "It is simply wrong to manipulate court jurisdiction and procedure as this bill would do, to try to make it more or less likely that the federal courts will reach particular results."

Even before the bill made it to the House floor, the only provision enjoying strong Judiciary support was stricken. The provision would have repealed section 140 of P.L. 97-92 and delinked judges' pay from that of members of Congress. But because the provision would have allowed an automatic cost-of-living adjustment for federal judges, it was viewed by the House Rules Committee as providing an "entitlement" and, as such, was ruled out of order. The action, however, provoked an emotional discussion of judges' pay.

See **Bill** *on page 2*

INSIDE

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Director's Awards Honor Seven ..... pg. 6

INTERVIEW

Meeting the Needs

Representative Rogers Talks About the Judiciary, the Budget, and the Challenging Times to Come

Representative Harold Rogers (R-KY) chairs the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies. A House member since 1981, he has been a member of the subcommittee for 15 years.

See **Page 10**, *for his views on what the immediate future holds for the Judiciary.*

Bill continued from page 1

(See the accompanying story on support for judges' pay.)

Two sections were dropped during floor debate. H.R. 1252 no longer contains a provision that would limit a federal court's ability to enter any order or approve any settlement that requires any state, or political subdivision of a state, to impose, increase, levy, or assess any tax for the purpose of remedying the deprivation of a right under the Constitution. Also dropped from the bill was a provision strongly opposed by the Judicial Conference that would have allowed a party to a district civil case to bring a motion to reassign the case to another judicial officer.

The Conference also opposes several provisions retained in the House-passed bill. These provisions would:

- ❒ Refer complaints of judicial misconduct not dismissed as frivolous, relating to the merits of a decision, or not in conformity with the statute, to another circuit for complaint proceedings;
- ❒ Authorize the presiding judge of an appellate or district court to permit photographing, electronic recording, broadcasting, or televising to the public of court proceedings. This provision was amended by Representatives Jerrold Nadler (D-NY) and Steve Chabot (R-OH) to allow the court, upon request of any witness in a trial proceeding other than a party, to obscure the face and voice of the witness so that it is unrecognizable to the broadcast audience;
- ❒ Require a three-judge court to hear an application for an injunction restraining, on the grounds of unconstitutionality, the enforcement, execution, or operation of a state law adopted by referendum;
- ❒ Authorize a court of appeals to permit an appeal by either party from a district court's class action certification decision. (This provision circumvents procedures established by the Rules Enabling Act.); and
- ❒ Randomly assign habeas corpus cases in a given judicial district.

The Conference supports a provision in H.R. 1252 that would create special federal jurisdiction for litigation arising out of a single accident resulting in the injury or death of at least 25 persons alleging damages over $50,000 each. The Conference takes no position on a provision in the bill that would extend the time limit to file appeals of decisions by the Merit Systems Protection Board from 30 to 60 days.

The final provision of the House-passed H.R. 1252 was added by Representative Tom Delay (R-TX) on a "law and order" vote of 367-52. The amendment, which would place limitations on prisoner release orders, says ". . . in a civil action with respect to prison conditions, no court of the United States . . . shall have jurisdiction to enter or carry out any prisoner release order that would result in the release from or non-admission to a prison, on the basis of prison conditions, of any person subject to incarceration, detention or admission to a facility. . ." The provision also would terminate any existing consent decrees entered into before the enactment of the Prison Litigation Reform Act of 1995, that provide for remedies relating to prison conditions. In his arguments for the amendment, Delay criticized judges who, he said, have taken control of their states' prison systems. Said Delay, "There is an activist judge behind each of most of the perverse failures of today's justice system."

Friends of Judiciary Support Judges' Pay on House Floor

In the day-long consideration of H.R. 1252, the Judicial Reform Act of 1998, the tone of House debate changed dramatically when the topic was cost-of-living allowances for federal judges. Representative Henry J. Hyde (R-IL), chair of the House Judiciary Committee, rose with an amendment to reinstate a provision previously ruled out of order by the House Rules Committee. The provision would have repealed section 140 of P.L. 97-92 and delinked judges' pay from that of Members of Congress. However, in the face of what Hyde termed "serious resistance" that threatened to kill the entire bill, he did not offer the amendment.

Instead he addressed the House, saying, "Mr. Chairman, there are not many of us, a narrow band of Members, but there are some on both sides of the aisle who feel that we mistreat in terms of cost-of-living allowances our Federal judiciary. Now that is a poisonous subject in some quarters, because judge bashing is a universal sport. But it is a fact, of all the government employees in the galaxy, the only group that does not get an automatic cost-of-living increase is the Federal judiciary. . . . The only way they can get a cost-of-living allowance is by us voting them one. I think isolating Federal judges from all of the other employees in the Federal Government

House Judiciary Committee Chairman Henry J. Hyde (R-IL)

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gged so they are different from
verybody else. I think that is unfair."

Representative John Conyers Jr. (D-MI), ranking minority member on the House Judiciary Committee, joined Chairman Hyde in this comments on delinkage of judges' pay from those of members of Congress. "Very frankly, my friends, this has to do with whether or not the Congress of the United States has either the courage or the judgment to stand and do what I think the overwhelming majority voted to do back in 1989, and that is take a cost-of-living adjustment, not a pay raise, but a cost-of-living adjustment to keep pay even. . . .Now, if we think we ought not to do that for ourselves, what the Chairman is saying, we ought not to tie in others to that same position, which in my opinion relates not to the equity of pay but relates all to politics. . . .But I think it is wrong that we continue to keep the judiciary tied to the political vagaries of what this body is willing to do for itself."

Representative Sheila Jackson-Lee (D-TX) also defended the cost-of-living adjustment. "I would like to add my concern and willingness to go the extra mile on what I think is an important and crucial issue: Are we going to have the best judicial branch this Nation can afford? And I, too, supported the effort of the Chairman to reflect on our appreciation and respect for the judiciary and the difficulty of their job and position and, likewise, as a newer Member, think that we can defend COLAs no matter who it happens to be for, unfortunately, politics do get in the way."

Representative John Conyers Jr. (D-MI)

Finally, Representative Barney Frank (D-MA) rose to offer his support. "I want to express my admiration to the gentleman from Illinois. Taking the position he is taking so vigorously is not an easy one around here. But I hope Members will listen to what he said, separate out views that Members may have on particular judges and particular decisions from the more important question.

"We all agree that there is going to be Federal law. We agree that there is going to be Federal criminal law and Federal civil law. We certainly all agree, I hope, that we want our constituents well served by thoughtful, intelligent people.

"We want people who are at the top of the profession in temperament, and intelligence, and ability. Paying them as little as we do is a mistake. We are not going to get justice on the cheap that way, and we do not serve well this cause of justice for our constituents."

Judges, Director Prepare to Discuss Courthouse Funding With Speaker

(Photo left to right) Administrative Office Director Leonidas Ralph Mecham; Judge B. Avant Edenfield (S.D. Ga.); Judge Malcolm Marsh (D. Ore.), who was representing the Judicial Conference Committee on Security and Facilities; and Bankruptcy Judge Lamar W. Davis, Jr. (S.D. Ga.) recently met with Speaker of the House Newt Gingrich (R-GA) to relay their concerns regarding the funding of the federal courthouse construction program.

House Approves Alternative Dispute Resolution Bill

Last month, the House passed, by a vote of 405-2, the Alternative Dispute Resolution Act of 1998, H.R. 3528. At the request of the Judicial Conference, the bill was amended to include several provisions intended to maximize a court's flexibility in developing its ADR program.

Late last year, Chief Judge D. Brock Hornby (D. Me.), chair of the Judicial Conference Committee on Court Administration and Case Management, presented the Conference's position on ADR at hearings before the House Judiciary Subcommittee on Courts and Intellectual Property. The Conference supports the use of ADR by district courts, and *The Long Range Plan for the Federal Courts* encourages district courts to make available a variety of alternative dispute resolution techniques, procedures, and resources. The Conference does not support the expansion of mandatory court-annexed arbitration programs.

Under H.R. 3528, district courts must require litigants in all civil cases to consider the use of an alternative dispute resolution process at an appropriate stage in the litigation. Each district court shall provide litigants in civil cases with at least one alternative dispute resolution process, including, but not limited to, mediation, early neutral evaluation, mini-trial, and arbitration. Any district court that elects to require the use of ADR in certain cases may do so only with respect to mediation, early neutral evaluation, and, if the parties consent, arbitration.

Representative Howard Coble (R-NC), chair of the House Judiciary Subcommittee on Courts and Intellectual Property, told the House prior to a vote on the bill, that "In sum, this is a good bill . . . that will offer our citizens a reasonable and cost-effective alternative to expensive federal litigation while still guaranteeing their right to have their day in court."

H.R. 3528 allows courts to exempt specific cases or categories of cases in which ADR would not be appropriate. It also provides for the confidentiality of ADR processes, prohibiting disclosure of confidential dispute resolution communications.

The Judicial Conference opposed an earlier version of this bill that would have required courts to establish arbitration programs, and H.R. 3528 does not make that requirement. The Conference also has opposed requiring all litigants to go through the extra step of ADR, which could add cost and delay.

New Members of Executive Committee Named

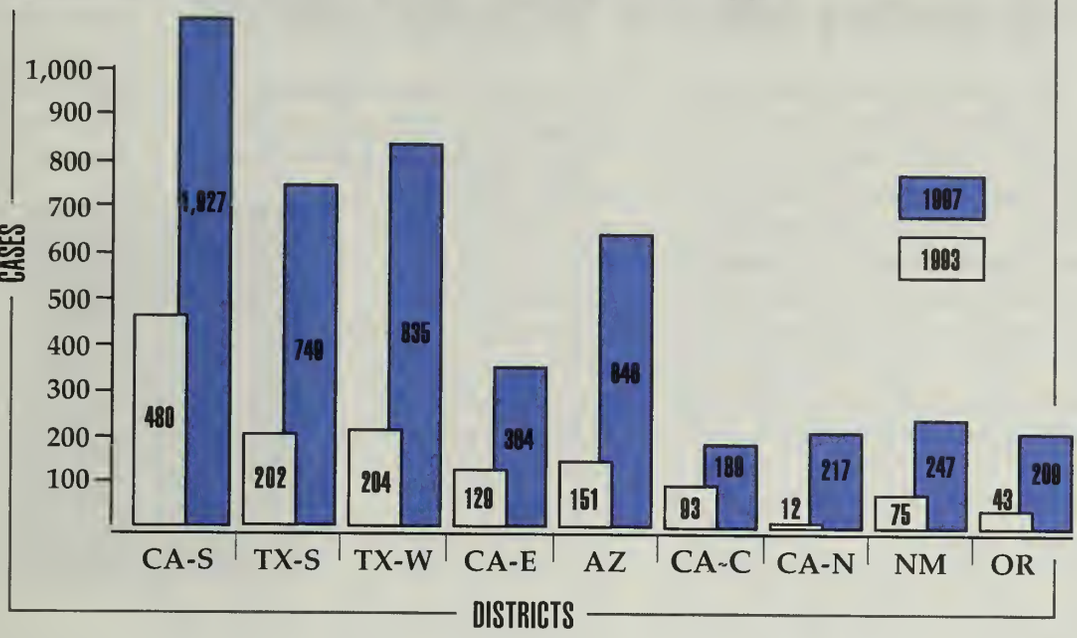
Chief Judge Ralph K. Winter (2nd Cir.)

Chief Judge Boyce F. Martin Jr. (6th Cir.)

Chief Justice William H. Rehnquist has appointed Chief Judge Ralph K. Winter (2nd Cir.) and Chief Judge Boyce F. Martin Jr. (6th Cir.) to the Judicial Conference Executive Committee. The addition of Winter and Martin brings the Executive Committee to full strength with eight members. Judge Wm. Terrell Hodges (M.D. Fla.) chairs the committee and Administrative Office Director Leonidas Ralph Mecham is an ex-officio member. The Chief Justice makes all appointments of Conference committee chairs and members.

The Executive Committee is the Conference's senior executive arm, acting on behalf of the Conference between regular sessions on any matter requiring emergency action, in addition to other duties. Among its responsibilities, the Committee reviews the jurisdiction of Conference committees, reviews and approves the Judiciary's annual financial plans, prepares proposed discussion and consent calendars for the meetings of the Conference, and establishes and publishes procedures for assembling agendas and schedules of events in preparation for Conference sessions.

mmigration-Related Cases Soar Over 5-Year Period



The graph shows the rise in immigration case filings between calendar years 1993 and 1997 in nine federal court districts. In 1997, these districts collectively accounted for 75 percent of the national immigration filings, up from the 57 percent they accounted for in 1993.

In the five-year eriod ending December 997, criminal filings of nmigration-related ffenses in district ourts grew 197 percent, ccording to statistics ompiled by the Admin- trative Office. This as an increase of 4,754 lings of such offenses reentry after deporta- on, documentation aud, and immigrant nuggling.

As a consequence, the ntribution of immigra- on filings to overall iminal filings rose from 5 percent to percent between 1993 and 1997—ore than doubling nationally.

Of the nationwide increase filings, 84 percent occurred in ne districts in the Southwest and eighboring regions: the District Arizona, the Central, Eastern, orthern and Southern Districts California, the District of New exico, the District of Oregon, and e Southern d Western istricts of xas. These stricts llectively counted for percent of e national immigration filings, up om the 57 percent they accounted r in 1993. The Southern District of lifornia alone had more than one arter of all immigration cases, and total filings each year were more an twice as high as those of the estern District of Texas and the uthern District of Texas, the courts th the second and third highest mber of immigration filings, spectively.

Between 1993 and 1997, the ntribution of immigration filings to overall criminal filings more than doubled nationally, going from 5 percent to 14 percent. This contribution also doubled in seven of the nine districts reviewed and almost doubled in the Western District of Texas and the Central District of California. In the Southern District of California, this contribution rose from 23 percent in 1993 to 55 percent in 1997.

The Department of Justice's aggressive immigration policies account for the large increase in filings.

During the five-year period, in six of these nine districts, the growth of immigration filings far exceeded the 197 percent national increase. As the accompanying chart shows, the largest percentage increase in filings was in the Northern District of California, where immigration cases rose from 12 filings in 1993 to 217 in 1997, a 1,708 percent increase.

The large increase in immigration filings were the result of aggressive immigration policies pursued by the U.S. Department of Justice (DOJ) for the prosecution of repeat border crossers and criminals trying to enter the U.S. through this region.

Three DOJ programs—Operations Hold the Line in Texas, Gatekeeper in California, and Safeguard in Arizona—put resources in the form of enforcement personnel, equipment, and new technology into this effort. Immigration offenses remain high on the list of national priorities, and the DOJ has requested additional border patrol positions in future budgets, so immigration filings are expected to continue to increase.

However, this analysis of immigration cases gives only a partial picture of the increases that occurred in the Southwestern districts as a result of DOJ's initiatives. It does not include an analysis of drug-related case filings or of filings of false claims and statements of fraud, both of which rose in many of these districts because of the availability of additional resources.

Seven Federal Judiciary Employees Honored With 1998 Director's Awards for Outstanding Leadership

Seven 1998 Director's Awards for Outstanding Leadership were recently awarded to federal court employees who have made long-term contributions to the increased effectiveness of the federal Judiciary. The awards are given annually by Leonidas Ralph Mecham, director of the Administrative Office (AO), based on evaluations of nominations by two federal judges and an assistant director of the AO. This year, Judge Patricia Wald (D.C. Cir.), Judge Royce Lamberth (D. D.C.), and Myra Howze Shiplett, assistant director of the AO's Office of Human Resources and Statistics reviewed the nominations.

The recipients of the 1998 Director's Awards are **James D. Baer**, substance abuse coordinator for the U.S. Probation Office, U.S. District Court for the Central District of California; **Lloyd C. Ray Jr.**, clerk of court for the U.S. Bankruptcy Court for the Middle District of Tennessee; **Kenneth Russo**, data network administrator for the U.S. Court of Appeals for the Fifth Circuit; **Mary Schwappach**, project manager for the U.S. District Court for the District of Minnesota; **Jack Wagner**, clerk of court for the U.S. District Court for the Eastern District of California; and **Bruce Rifkin**, clerk of court for the U.S. District Court for the Western District of Washington. A special Director's Award for Outstanding Leadership was given to **James Manspeaker**, clerk of court for the U.S. District Court for the District of Colorado, in recognition of his leadership and professionalism during two recent high-profile trials.

Lloyd C. Ray Jr.

James D. Baer, substance abuse coordinator for the U.S. Probation Office, U.S. District Court for the Central District of California, was honored as a leader in facilitating the development and improvement of drug detection techniques, which can provide more accurate information about the nature and intensity of substance abuse. He was the primary person to introduce to the criminal justice system three of the most significant developments in substance abuse monitoring in the last 20 years: hair analysis, sweat analysis, and non-instrumented on-site testing. Writing in support of Baer's nomination, Robert Latta, chief probation officer, U.S. District Court for the Central District of California, noted, "Baer's contributions to improving the way substance abuse treatment is provided have enabled officers to more effectively ascertain if an offender is abstaining from or using prohibited substances. Officers are able to more quickly initiate intervention strategies and thereby decrease relapse and recidivism."

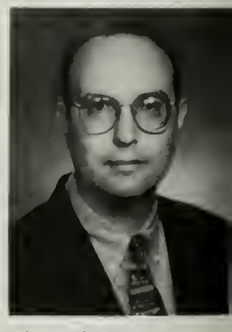
James D. Baer

Lloyd C. Ray Jr., clerk of court for the U.S. Bankruptcy Court for the Middle District of Tennessee, was honored for his efforts to improve efficiency and technological proficiency in the U.S. Bankruptcy Court for the Middle District of Tennessee. Ray established a highly successful computer information system, proficient case management procedures, and staff training practices. His design skills enabled the court to operate one of the first Chapter 13 trustee computers in a courtroom, resolving hundreds of consumer cases on a single docket. By creating a computer program that added an 11 digit zip code, Ray was able to negotiate a reduced postage rate that saved the district approximately $40,000 annually. He was on the forefront of designing and implementing a public access system with the local bar association to allow attorneys direct computer access to the court's data in real time.

According to Bankruptcy Judge George C. Paine, II (M.D. Tenn.), "The bottom line is that under Mr. Ray's leadership and direction, this court has maintained its pace with the rapidly changing technology as one of the most innovative, cutting edge systems in the Judiciary today."

Kenneth Russo, data network administrator for the U.S. Court of Appeals for the Fifth Circuit, was honored for his commitment to improving the technological resources of the courts.

Chief Judge Henry A. Politz (5th Cir.) said, "Over the past eight years, Mr. Russo has produced consistently innovative computer software and connectivity programs for the court family, both locally and nationally... Mr. Russo's ideas, concepts, and successes with state-of-the-art computer architecture have courts



Kenneth Russo

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 30 Number 5 May 1998

DEPUTY CHIEF U.S. PROBATION OFFICER TYPE II, Eastern District of Washington

The Eastern District of Washington is seeking qualified applicants for the position of Deputy Chief U.S. Probation Officer II, (JSP 14-15). Incumbent to assume full responsibilities of Chief U.S. Probation Officer without further competition upon retirement of current incumbent in May, 1999. Please send confidential letter of interest and resume to: Human Resource Department, U.S. Probation Office, P. O. Box 306, Spokane, WA 99210-0306. For additional information contact Nancy Wideman, Personnel Specialist, (509) 353-3240. **Application deadline: August 15, 1998**

U.S. MAGISTRATE JUDGE, Eastern District of California

The U.S. District Court for the Eastern District of California is accepting applications for a full-time magistrate judge position at Fresno, California. The term of office is eight years. Salary: $125,764. Application forms and information on the position may be obtained from the clerk of the U.S. District Court at 650 Capitol Mall, Rm. 2546, Sacramento, California or at 1130 "O" Street, Rm. 5000, Fresno, California. Applications must be submitted only by potential nominees. **Application deadline: no later than June 30, 1998.**

CLERK OF BANKRUPTCY COURT, District of Hawaii

The U.S. Bankruptcy Court for the District of Hawaii is seeking qualified applicants for the position of clerk of court. The clerk of court is responsible for managing the administrative activities and for overseeing the performance of the statutory duties of the clerk's office. Salary: $85,095 to $110,574, plus 22 ½ percent cost-of-living adjustment. Qualifications include a minimum of 10 years of progressively responsible administrative experience in public service or business is required. Active practice of law, and degree(s) from a college or university may substitute for all or part of the administrative experience requirement. Applications, including a resume and an application letter, may be sent to CLERK SEARCH, c/o Hon. Lloyd Kind, U.S. Bankruptcy Court, 1132 Bishop Street, Honolulu, Hawaii, 96813. References are requested. Candidates selected for interviews must travel at their own expense. **Application deadline: no later than July 17, 1998.**

ASSISTANT MANAGER FOR INFORMATION TECHNOLOGY, U.S. Court of Appeals for the Eleventh Circuit

The Eleventh Circuit seeks CNE-certified professional to assist and oversee the operation and maintenance of information technology including WAN and LANs in Georgia, Alabama, and Florida. Minimum two years experience in installation and support of Novell networks, Windows95 workstations, and cc:Mail electronic mail systems required. Experience with WinNT and remote network support a plus. Good verbal and written communications skills and proven ability to manage and work with people at all levels a must. Technical training and documentation experience desirable. Forty percent travel required. Salary range: $52,368 to $100,133. Send resume to Personnel Specialist, U.S. Court of Appeals, 56 Forsyth Street, NW, Atlanta, GA 30303. **Application deadline: June 29, 1998.**

CALENDAR DATES FOR THE THIRD BRANCH

Vol. 30 Number 5 May 1998

JUNE

3-4 **Wednesday-Thursday**
Committee on Judicial Resources

3-5 **Wednesday-Friday**
DC Circuit Conference

4-5 **Thursday-Friday**
Committee on Criminal Law

7-9 **Sunday-Tuesday**
Committee on Security and Facilities

8-9 **Monday-Tuesday**
Committee on Administration of the Magistate Judges System

8-12 **Monday-Friday**
Orientation for Newly Appointed District Judges

10-11 **Wednesday-Thursday**
Committee on Automation and Technology

11-12 **Thursday-Friday**
Committee on the Administrative Office

15-16 **Monday-Tuesday**
Committee on Federal-State Jurisdiction

15-17 **Monday-Wednesday**
Committee on Court Administration and Case Management

16-17 **Tuesday-Wednesday**
Committee on the Administration of the Bankruptcy System

18-19 **Thursday-Friday**
Committee on Rules of Practice and Procedure

21-25 **Sunday-Thursday**
Ninth Circuit Conference

22-23 **Monday-Tuesday**
Committee on the Judicial Branch

25-27 **Thursday-Friday**
Fourth Circuit Conference

25-27 **Thursday-Friday**
Tenth Circuit Conference

JULY

1-3 **Wednesday-Friday**
National Workshop for Magistrate Judges I

9-11 **Thursday-Saturday**
Committee on Codes of Conduct

20-21 **Monday-Tuesday**
Committee on the Budget

hroughout the Judiciary seeking his ssistance and expertise on a daily asis." Russo was instrumental in ioneering the effort to obtain a omain for the Judiciary on the nternet, which eliminated the need o subscribe to costly internet service roviders and resulted in substantial vings. He also took the lead in reating a web site with a news erver and the installation of a ational cc:Mail to Internet e-mail ystem; as well as in designing ffective computer security for the fth Circuit.

Mary Schwappach, project anager for the U.S. District Court for e District of Minnesota, was onored for her efforts in coordinat- g the move of the federal courts' visional offices in Minneapolis, innesota, to a new U.S. courthouse. he move entailed relocating approxi- ately 250 judges and court staff, nd more than 4,000 pieces of new, sed and refurbished furniture and quipment over a period of six weeks. he move was accomplished without terruption of services to the public nd without compromising the urt's security. Both Chief Judge Paul A. Magnuson (D. Minn.) and Clerk of Court Francis E. Dosal praised the move as "virtually problem-free." In addition, Schwappach's an for furniture acquisition saved e court approximately $40,000. The an, which has since been adopted a model by the Administrative ffice for other courts, facilitates the uitable distribution of court funds r furniture purchases associated ith new courthouse construction ojects.

Mary Schwappach

Jack Wagner, clerk of court for the District Court for the Eastern District of California, and **Bruce Rifkin**, clerk of court for the District Court for the Western District of Washington, are co-recipients of a 1998 Director's Award for Outstanding Leadership. Wagner and Rifkin were honored for their partnership in creating a national training program that shows courts how to be more effective partners in construction projects while reducing cost overruns through a better understanding of their roles and responsibilities. Judge Robert E. Coyle (E.D. Calif.) noted the advancements that Wagner's and Rifkin's program inspired. He wrote, "The end result will be better projects, preservation of the presence of the court and its architecture in the communities we serve, and a better presentation to the courts, at the early stages, of methods of savings and unique ideas that might otherwise be lost."

Bruce Rifkin

Jack Wagner

James R. Manspeaker, clerk of court for the U.S. District Court for the District of Colorado, won a special 1998 Director's Award for Outstanding Leadership for his guidance and professionalism during the Oklahoma City bombing case trials, *U.S. v. Timothy James McVeigh and Terry Lynn Nichols*, both held in Denver. Manspeaker is recognized for his efforts in addressing the special needs of these two trials. He assumed responsibility for all coordination among federal, state, and local entities, counsel and the media. He also coordinated staffing, records management, and trial logistics, while spearheading the reconfiguration of the trial courtroom and the auxiliary courtroom, and the electronic transmission of the trials to Oklahoma City.

James R. Manspeaker

Chief Judge Richard P. Matsch (D. Colo.) commended Manspeaker for his entire court career, but specifically his role in the *McVeigh* and *Nichols* trials. Matsch wrote, "At the outset, he recognized the special needs of these cases and developed effective plans for all of the phases... Moreover, he personally managed all of these functions each and every day. His good judgment, calm manner and quick thinking resolved many crises which could have disrupted and possibly destroyed these trials. These efforts were above and beyond what is required of him in his position as clerk of this court. They reflect a commitment to this country's system of justice that is best described as noble and a performance that is nothing less than heroic."

Nominees for the Outstanding Leadership Award are judged on the basis of their outstanding sustained contributions to increase program effectiveness and/or reduce costs in administration. All current and former employees except judges of the federal courts are eligible for the award.

JUDICIAL MILESTONES

Appointed: Susan P. Graber, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, April 1.

Appointed: Jeremy D. Fogel, as U.S. District Judge, U.S. District Court for the Northern District of California, March 31.

Appointed: Ivan L. R. Lemelle, as U.S. District Judge, U.S. District Court for the Eastern District of Louisiana, April 13.

Appointed: Hilda G. Tagle, as U.S. District Judge, U.S. District Court for the Southern District of Texas, March 27.

Appointed: Richard L. Young, as U.S. District Judge, U.S. District Court for the Southern District of Indiana, March 25.

Appointed: Harwell G. Davis, III, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Alabama, March 19.

Appointed: Gary R. Jones, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Florida, April 2.

Appointed: Elizabeth D. Laporte, as U.S. Magistrate Judge, U.S. District Court for the Northern District of California, April 4.

Appointed: John E. Ott, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Alabama, April 6.

Elevated: Judge Pasco M. Bowman, II, to Chief Judge, U.S. Court of Appeals for the Eighth Circuit, succeeding Judge Richard S. Arnold, April 18.

Elevated: Chief Bankruptcy Judge Richard L. Speer, U.S. Bankruptcy Court for the Northern District of Ohio, succeeding Judge James H. Williams, July 1, 1997.

Senior Status: Judge James M. Ideman, U.S. District Court for the Central District of California, April 2.

Senior Status: Judge Malcolm Marsh, U.S. District Court for the District of Oregon, April 16.

Senior Status: Judge Zita L. Weinshienk, U.S. District Court for the District Court of Colorado, April 3.

Retired: Magistrate Judge John B. Tolle, U.S. District Court for the Northern District of Texas, March 1.

Retired: Magistrate Judge John M. Dixon, Jr., U.S. District Court for the Western District of Kentucky, March 31.

Deceased: Judge L. Clure Morton, U.S. District Court for the Middle District of Tennessee, April 11.

Deceased: Judge Irving Hill, U.S. District Court for the Central District of California, March 18.

Deceased: Court of Appeals Judge Shiro Kashiwa, U.S. Court of Appeals for the Federal Circuit, March 13.

Deceased: Senior Judge Robert A. Grant, U.S. District Court for the Northern District of Indiana, March 2.

Deceased: Senior Judge Ben Krentzman, U.S. District Court for the Middle District of Florida, March 29.

Deceased: Bankruptcy Judge C. Houston Abel, U.S. Bankruptcy Court for the Eastern District of Texas, March 2.

Deceased: Bankruptcy Judge Frederick A. Johnson, U.S. Bankruptcy Court for the District of Maine, April 4.

Deceased: Bankruptcy Judge Richard W. Vandivier, U.S. Bankruptcy Court for the Southern District of Indiana, March 4.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of May 1, 1998

Courts of Appeals	
Vacancies	22
Nominees	13
District Courts	
Vacancies	55
Nominees	23
Court of International Trade	
Vacancies	1
Nominees	1
Courts with "Judicial Emergencies"	31

For more information on vacancies in the Federal Judiciary visit our website at www.uscourts.gov.

Commission on Structural Alternatives Holds Public Hearings

The Commission on Structural lternatives for the Federal Courts f Appeals has completed four of its x scheduled public hearings. ommission members heard testi- ony at hearings on March 23 in tlanta, on March 25 in Dallas, on pril 3 in Chicago, and in New York n April 24. The last two public earings will be held in Seattle on lay 27 and in San Francisco on lay 29.

To date nearly two dozen wit- esses have appeared before e Commission and these state- ents are available on the ommission's web site at p.comm.uscourts.gov.

Federal judges from the Second, hird, Fifth, Seventh, Ninth, and leventh Circuits have testified efore the Commission. Their stimony generally highlighted ractices in their circuits that have orked well to handle an ever- creasing workload. In addition, veral judges in the Fifth and eventh Circuits, who experienced e split of the old Fifth Circuit, ere able to add a unique perspec- ve on appellate structure.

The federal judges testifying were dge Patrick Higginbotham (5th r.); Judge Carolyn King (5th Cir.); rmer Chief Judge Robert Parker th Cir.); Chief Judge Joseph atchett (11th Cir.); Judge Gerald B. oflat (11th Cir.); former Chief Judge the 5th & 11th Circuits, Judge hn C. Godbold (11th Cir.); former ief Judge J. Clifford Wallace (9th r.); Judge Harlington Wood, Jr. th Cir.); former Chief Judge Jon ewman (2nd Cir.); former chair of e Federal Courts Study committee dge Joseph Weis (3rd Cir.); Judge armuid O'Scannlain (9th Cir.); rmer director of the Federal dicial Center, Judge William W hwarzer (N.D. Calif.); and Chief dge Edward Becker (3rd Cir.). Collins Fitzpatrick, circuit executive of the Seventh Judicial Circuit also testified.

Several attorneys and specialists on appellate issues testified before the Commission including: Thomas R. Meites, on behalf of the Chicago Council of Lawyers; Peter Jon Simpson, on behalf of Christian Legal Education Association & Research; Professor William Richman of the University of Toledo; Edwin G. Schallert, on behalf of the Association of the Bar of the City of New York; Professor Judith Resnik of the Yale Law School; Elena Ruth Sassower, on behalf of the Center for Judicial Accountability; Sharon Freytag of Dallas, Texas; Emmet J. Bondurant, Deborah Barrow and Laurie Webb Daniel of Atlanta, Georgia; and Charles E. Carpenter, Jr. of Columbia, South Carolina.

Following the last of the hearings in May and the conclusion of its own research, the Commission plans to formulate its recommendations and prepare a draft for review and comment. Congress has set a December 1998 deadline to receive the Commission's final report.

Law School for Journalists Held in Boston

Approximately 50 journalists recently participated in a three-hour Law School for Journalists co-sponsored by the District Court for the District of Massachusetts and the Flaschner Judicial Institute. Participating were Judges Sandra L. Lynch (1st Cir.), Nancy Gertner (D. Mass.) and William G. Young (D. Mass.), and Magistrate Judge Zachary R. Karol (D. Mass.), who spoke on topics designed to give journalists a better understanding of court processes and procedure, and of the issues that arise as they cover America's justice system.

Topics included the appellate courts, trial structure and evidence presentation in the district courts, the role of the jury, sentencing under the U.S. Sentencing Guidelines, and state-federal jurisdiction.

An Interview With Representative Harold Rogers

Q: Could you comment on the legislative pace of this session of the 105th Congress, and the chances of all the appropriations bills passing before Congress adjourns in October? Is another government shutdown possible?

A: It's going to be really tough to do, not only because of the short number of days, the controversies that we normally face, and the narrow margins in the House, but because our goal is to complete all the bills by October 1st. But we can't start yet because we don't have a budget resolution. I just talked with Chairman Livingston about that very subject, and we hope to begin marking up the appropriations bills in committee in middle to late May. We hope to begin to deliver the bills to the House floor beginning in June, and then over the summer and into September we'll be focused on passing them and getting them down to the White House. I think that we have to look at the realistic possibility that we may have a continuing resolution for a short period at some point this fall while Congress wraps things up. I don't think there will be a government shutdown.

Q: Generally, what do you look for in a submitted appropriations request? What factors influence the determination of the final appropriation?

A: We first evaluate the request to see if there are any extraordinary agency needs. In other words, is the justification for the request vital or mandatory. How is inflation affecting that agency? What our subcommittee has to spend by way of our budget allocation from the full Appropriations Committee obviously impacts heavily. Are there things that the agency is doing that are no longer needed? Do they have a carry-over balance of funds from the previous year? Are we under a spending cap, which we are now? These are the kinds of things that have to be taken into account.

Q: As chair of the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, you've held hearings on the Judiciary's appropriation. What does your subcommittee look at when it comes time to focus on the budget for the judicial branch?

A: We take the same general approach as with other departments, but the courts, and particularly the Supreme Court, obviously stand in a very unique position as the Third Branch of our government. Since I've been on the subcommittee, 15 years now, we seem to almost always give the Supreme Court exactly what they request. We question them about it, but it's such a unique relationship that the Supreme Court has with Congress. Given the Constitutional separation of powers, we bend over backwards to be sure we don't appear to be attempting to influence the court on any subjects it may rule on. While we expect the court to live under the same rules every other agency does as far as spending policies, we don't grill them as rigorously as we may others.

Are there courts below the Supreme Court we feel a little bit more free to examine and inspect and suggest and question? Probably so. I've made it a point to try to nudge the courts to modernize, to use the equipment that's available in the information age, teleconferencing, computerization, and that type of thing in order to save expenses on travel. The number of new judges that have been appointed, and the expansion of the jurisdiction that we have given the courts by the federalization of a lot of previously local or state crimes, for example, are relevant issues. However, the number of authorized judges is not as important as the number of judges who get confirmed. The expenditures associated with a judge confirmed in June will not be as great as one appointed in January. Also, changes that are necessary because of security threats to courthouses, judges, and personnel pose some questions unique to the courts.

Q: What are the prospects for the Judiciary's budget in fiscal year 1999?

A: Well obviously it's early in the process, so I really can't give you much of an idea about how it will line up. I don't yet have a complete picture of the needs of all the agencies we have to fund under our bill. My guess is that for the

urts FY 99 will be average, subject the allocation provided to the ubcommittee. We're not going to nortchange the courts.

Q: The Judicial Reform Bill, H.R. 1252, was just passed by e House. What are your thoughts the bill?

A: I supported it. I don't agree with the entire bill, but on the hole it's a good bill.

Q: In the past you've expressed concerns regarding the diciary's need to economize and ou requested the annual *Optimal tilization of Judicial Resources* ports. Based on these reports, how the Judiciary responding to your ncerns?

A: The reports are very useful. It started as a one-time report few years ago, and since that time e requested that it be done on an nual basis. Unlike most of the ecutive branch agencies for hom we appropriate, the Judiciary oes not have an Inspector General, ho helps dig out waste, fraud, d abuse. We look to the Judicial nference to do that, and to vigor-sly self-examine and to look for ays to improve and save money here they can. The more specific d measurable these savings are, the tter we're able to recycle monies, an other funding that otherwise ight not be possible, and convince r colleagues of these needs. So the forts of the Judicial Conference to help us save money are extremely valuable.

Q: In the appropriations hearings last year you expressed some alarm at rising costs for defender services. The Judiciary has since responded with a report describing why such costs were rising and the steps taken to hold these costs down. Did the report respond adequately to your concerns?

A: We've received your report and it does help us focus on a couple of areas and on the cost of high profile capital cases, and, in particular, in the 9th Circuit. With respect to capital habeas corpus costs, three of the California districts are well above the national average. We'll continue to digest the report, and we hope to use that information to ensure that the funding is being put to the most productive use. The 9th Circuit's cost is going to have to be addressed because it's intolerable.

Q: Also in the appropriations hearings this year you raised some questions regarding court security. What are the issues in this area?

A: We're going to bend over backwards to be sure that the Judiciary is as safe as we can make it. That's the keystone to the whole process. Security is absolutely critical and it will be properly funded. However, we do want to know where the money is going so that we can have some oversight. For the current fiscal year we gave a $40 million increase, which is 30 percent more than the previous year. It was justified in part on the need to fund court security officer (CSO) positions that we thought were already funded through increases that had been provided in previous years. We wrestled with that last year. For FY 99 the request includes a substantial number of positions for existing courts that we thought already have been brought up to standard. The end result of the scrutiny that the Judicial Conference and our subcommittee have exercised is that the program today is better managed by the U.S. Marshals. We're getting to a point where the Marshals' current CSO staffing for each court is approaching the staffing standard for CSO positions. The next step will be to adopt a similar system for court security equipment, and hopefully we will achieve a court security management system in which we can have full confidence.

Q: Although the issue of courthouse construction funding will not come before your subcommittee, the full appropriations committee will consider such bills. As you have a unique perspective on the Judiciary's increasing workload and its aging courthouses, how would you view proposed funding for courthouses.

A: Of course our subcommittee doesn't handle construction, but being on this subcommittee gives me a little bit better view of what the needs are than somebody else. The courts need more space and better space, but the cost of ongoing projects

See Interview on page 12

Interview continued from page 11

has resulted in a hold on new ones. We're still under the budget caps from last year, especially for new projects, and of course I have to defer to the authorizing committees, the Treasury, Postal Appropriations Subcommittee, to make those decisions.

Q: You have encouraged the Judiciary to pursue cost-savings, especially in the area of videoconferencing and teleconferencing. What is your assessment of the progress made by the Judiciary in this area?

A: I was very pleased to tape the introduction for the inaugural broadcast of the Federal Judicial Center's Satellite Television Network. I think that the new technology age is especially exciting for the courts because of the geographic distances that the courts have to operate in, and the need for some sort of uniformity in the positions, security, and training. That's a unique attribute that teleconferencing offers the courts. It also can save travel costs. So I'm very excited about the teleconferencing center and the interlocking of a computer system nationwide.

Q: Any final comments?

A: The Judiciary in this country is facing perhaps its most vigorous challenge. The modern age is demanding more and more of judges—and I don't mean intelligence and research—but in terms of time. I think we've just gotten started. While it's going to be an exciting time for the world, it is really a demanding time for the court system to try and keep up with a world that's changing underneath our feet, sometimes almost faster than the eye can see. I'm a lawyer so I can say this: lawyers and courts are tradition-based, and their reliance on rules and the legal process and the status quo may keep them from moving into the modern age. The courts have to modernize, have to use modern procedures and adapt to the world's way of doing business, particularly in research. I think that the courts face their biggest challenge right now in just keeping up with modern technology. You probably can say the same for business, Congress, or any other profession. The speed at which technology is changing is phenomenal.

THE THIRD BRANCH

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FEDERAL DEPOS

Chief Justice Raises Concerns On Federalization

Chief Justice William H. Rehnquist, n addressing the American Law nstitute's annual meeting last month, uestioned how much of the complex ystem of legal relationships in this ountry should be determined in Vashington, and how much by state nd local governments.

Rehnquist was referring to what he alled the propensity of Congress and he President "to enact more and nore legislation which brings more nd more cases into the federal court ystem"—a concern he voiced in his 997 annual report. He singled out two juvenile crime bills pending before the House and Senate as examples of legislation that would, if enacted, "be the latest in a series of laws passed by Congress that have expanded the jurisdiction of the federal courts."

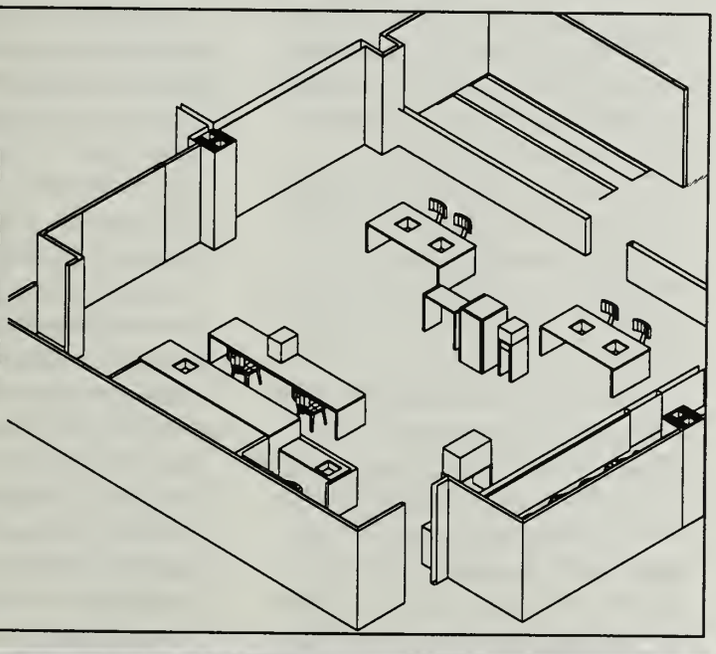
"These Senate and House bills raise the same concerns because they contain nearly identical provisions," said the Chief Justice. "First, both bills eliminate the traditional preference for state prosecutions of juvenile defendants, particularly if the juvenile is to be prosecuted as an adult. Current law favors state prosecution unless the government certifies to the district court that (1) the state cannot or will not take jurisdiction; (2) the state's juvenile programs are inadequate; or (3) the offense is a violent crime or a drug-trafficking offense and there is a substantial federal interest involved in the case," Rehnquist said. "Either of the juvenile crime bills presently before Congress would eviscerate this traditional deference to state prosecutions, thereby increasing substantially the potential workload of the federal Judiciary."

In 1997, the number of criminal cases reached 50,363, the highest level since 1933. Ending the preference for state prosecution and prosecuting juveniles as adults in federal courts, would, according to Rehnquist, "exacerbate the problem revealed by these numbers because adult criminal proceedings are far more time-consuming than their juvenile counterparts." Rehnquist also cited the more formalized structure of adult proceedings and the likelihood that adult convictions and death penalty cases may more likely be appealed, all of which adds to the federal caseload.

Senate Judiciary Committee chair, Senator Orrin Hatch (R-UT), and Senator Jeff Sessions (R-AL), chair of the Youth Violence Subcommittee, responded to the Chief

See ALI on page 2

High-Profile Trials Showcase Technology



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Videoconferencing Links Federal Courts and Public .... pg. 6
Appellate Commission Wraps Up Hearings ..... pg. 9

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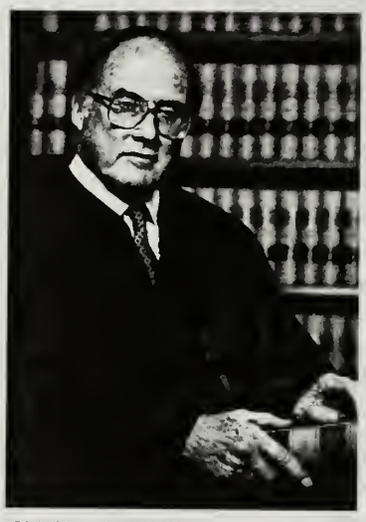
Justice in a joint letter. Saying that the committee "does not intend or expect a substantial increase in the number of juvenile cases adjudicated or prosecuted in federal court," the senators wrote that no conduct that is not a federal crime now will be if this provision becomes law. "We are, of course, mindful of the concerns you have raised," the letter read. "We are particularly sensitive to the fact that, in recent years, Congress has made federal criminal offenses of conduct that, in the past have only been state crimes. As you have noted, this expansion of concurrent state and federal criminal jurisdiction has implications for the duties and workload of the federal courts. Certainly, when there is concurrent jurisdiction over an offense and an offender, principles of comity and the traditional primacy of states in criminal matters dictate that the presumption in both adult and juvenile cases should be in favor of state prosecution, absent an overriding federal interest in the case." They went on to assure the Chief Justice that this general policy would be followed in the revisions to the federal juvenile code.



Chief Justice William H. Rehnquist

The *Long Range Plan for the Federal Courts*, adopted by the Judicial Conference in 1995, recommends that federal courts should only have criminal jurisdiction in five types of cases: offenses against the federal government or its inherent interests; criminal activity with substantial multistate or international aspects; criminal activity involving complex commercial or institutional enterprises most effectively prosecuted using federal resources or expertise; serious high-level or widespread state or local government corruption; and criminal cases raising highly sensitive local issues.

Referring to this recommendation, the Chief Justice said, "There is, I hasten to say, no reason why Congress should slavishly follow the recommendations of the Judicial Conference. But the Long Range Plan is based not simply on the preferences of federal judges, but on the traditional principle of federalism that has guided this country throughout its existence. It is a principle enunciated by Abraham Lincoln in the nineteenth century and Dwight Eisenhower in the twentieth century: matters that can be handled adequately by states should be left to them; matters that cannot be so handled should be undertaken by the federal government. Reasonable minds will differ on how this very general maxim applies in a particular case, but the question which it implies should at least be asked."

The Chief Justice also cited the Anti-Car Theft Act of 1992, the Violence Against Women Act of 1994, the Freedom of Access to Clinic Entrances Act of 1994, the Child Support Recovery Act of 1992, the Animal Enterprise Protection Act of 1992, and the arson provisions added to Title 18 in 1993 as examples of legislation expanding the jurisdiction of the federal courts. "[O]ne senses from the context in which they were enacted that the question of whether the states were doing an adequate job in this particular area was never seriously asked," Rehnquist told ALI members.

Senate Bankruptc Bill Would Requir Travel Reports

S. 1301, the Consumer Bankrup Reform Act of 1998, a bill which substantially amends the bankrup statute, and also adds bankruptcy judgeships, was approved by the Senate Judiciary Committee just before Congress recessed for its Memorial Day district work perio Action on S. 1301 may occur in th Senate before the end of July, afte Congress returns from the Indepe dence Day Holiday period. The House Judiciary Committee approved its version of the bankrup reform legislation, H.R. 3150, and full House passed the bill in the second week of June. This bill doe not contain bankruptcy judgeship

The Judicial Conference has ask Congress to create seven permane bankruptcy judgeships and 11 temporary bankruptcy judgeships convert two existing temporary bankruptcy judgeships to perman positions, and extend the terms of three other existing temporary judgeships. A House bill, H.R. 159 (the Bankruptcy Judgeship Act of 1997), which passed in the first session of the 105th Congress, would authorize seven new perma nent bankruptcy judgeships and 1 temporary judgeships, and would extend a temporary judgeship in the District of Delaware for five years. S. 1301 creates 18 temporary bankruptcy judgeships and extend the terms of five existing temporar bankruptcy judgeships. Upon Sena passage of S. 1301, differences between the House and Senate bill would be resolved in conference.

When the Judiciary Committee considered S. 1301, an amendment

creating the new bankruptcy judgeships was offered by subcommittee chair Senator Charles E. Grassley (R-IA) that included a provision on judges' travel. Previously, Grassley had asked the General Accounting Office to study the basis upon which the Conference makes its requests for Article III judgeships and bankruptcy judgeships. He also has questioned the amount and type of travel by judges. The Grassley amendment to S. 1301, as adopted in committee markup, requires all bankruptcy judges to report all non-case related compensated travel, whether official or not, to the chief bankruptcy judge of the district. The reports would include the name of the judge, the cost, subject and purpose of the travel, and the number of days involved, and would be forwarded to the Administrative Office annually. The AO, in turn, would be required to compile a national report to be sent to Congress. Members of Congress already prepare a similar report on their travel.

Bankruptcy cases filed in the U.S. now number nearly 1.42 million annually. The number of bankruptcy cases has risen steadily over the last eight 12-month periods, and the increases underline the acute need for new bankruptcy judgeships. New bankruptcy judgeships were last created in 1992.

In other legislative news:

Oversight Hearing Scheduled

The House Judiciary Subcommittee on the Courts and Intellectual Property held a judicial branch oversight hearing on June 11. Judicial Conference Executive Committee Chair Judge Wm. Terrell Hodges (M.D. Fla.), Administrative Office Director Leonidas Ralph Mecham, and Federal Judicial Center Director Judge Rya Zobel discussed Judicial Conference activities, the operations of the Administrative Office, and the Federal Judicial Center. More information on the hearing will be in next month's issue of *The Third Branch*. The last judicial branch oversight hearing was in 1993.

• • •

S. 1892, a bill that would keep a person closely related to an Article III judge from serving on the same court, has been approved by the Senate Judiciary Committee and is awaiting floor action in the Senate. The bill was introduced in the Senate in the wake of the nomination of William A. Fletcher to the Ninth Circuit, where his mother, Judge Betty Fletcher, currently sits. Judge Fletcher has said she would take senior status should her son be confirmed to the Ninth Circuit. A judicial anti-nepotism bill, **H.R. 3926,** also has been introduced in the House. William Fletcher's nomination has been reported out of the Judiciary Committee and is awaiting floor action.

• • •

S. J. Res. 44, proposes an amendment to the Constitution of the United States to protect the rights of crime victims. Introduced by Senator Jon Kyl (R-AZ), this joint resolution is the latest in a succession of bills and proposed constitutional amendments addressing victims' rights. The Judicial Conference prefers a statutory approach to victims' rights over a constitutional amendment, but the momentum in Congress for a constitutional amendment continues to build. S. J. Res. 44 currently has 40 co-sponsors, and Senate Majority Leader Trent Lott (R-MS) has indicated there may be floor time for the amendment if it is reported out of committee before mid-year.

• • •

S. 2083, the Class Action Fairness Act of 1998, was introduced by Senators Grassley and Herb Kohl (D-WI) in mid-May. In the House, Representative Henry Hyde (R-IL) introduced **H.R. 3789,** the Class Action Jurisdiction Act of 1998. The bills would expand federal jurisdiction over class action suits in two respects.

First, the bills would amend section 1332 (diversity of citizenship) of Title 28, to provide original jurisdiction in the district courts by lowering the threshold for both the diversity of citizenship and the amount-in-controversy requirements. Second, the bills permit removal of multistate class actions to federal court. The bills also would

- ❒ Require that notice of proposed settlements (as well as all class notices) be in clear, easily understood language and include all material settlement terms, including the amount and source of attorney's fees.
- ❒ Require state attorneys general to be notified of any proposed class settlement that would affect the residents of their states. Notice also must be provided to the Department of Justice.
- ❒ Provide that attorney's fees in all class actions must be a reasonable percentage of actual damages and actual costs of complying with the terms of the settlement.
- ❒ Require the imposition of sanctions for a violation of Rule 11 of the Federal Rules of Civil Procedure. The nature and extent of the sanctions would remain discretionary.

Courtroom Make-Over Shows Value of Electronic Technology

Built in the 1960s, the Denver courthouse was not equipped to handle two high-profile trials

In anticipation of the special needs of two high-profile criminal trials, the Denver courtroom of Chief Judge Richard Matsch was brought into the electronic age with some of the best technology available to federal courts. The technology, which by all accounts helped the proceedings run smoothly, is being used increasingly in federal courts throughout the country to help bring economy and efficiency to the trial process.

The Denver courthouse was built in the 1960s, well before video monitors, much less personal computers, were considered necessary components of a trial. For example, to allow computers in the courtroom, new conduit had to be laid in the concrete subflooring for data communication network connections. The heating and ventilation systems also were upgraded to ensure the comfort of participants and public during what promised to be lengthy procedures, and to accommodate a profusion of electronic equipment.

Like these systems, much of the electronic technology added to the courtroom is unobtrusive. In fact, from a juror's perspective, the courtroom's make-over of the older traditional courtroom to the new electronic courtroom may seem less than dazzling. That was the intent.

"The technology shouldn't run the courtroom," said clerk of court James Manspeaker, "it should meet the court's requirements and function for the duration of a trial without problems. In short, it should help us conduct the most efficient proceeding possible. I think that's what we accomplished in Judge Matsch's courtroom."

More federal courts are making use of electronic technologies in courtroom situations and are adopting those aspects—from prerecorded videotape of testimony or arguments to the computer imaging of exhibits—that best answer their needs. Judge Edward W. Nottingham (D. Colo.), chair of the Judicial Conference Committee on Automation and Technology, has been a proponent of the electronic courtroom and has encouraged his committee to pursue the idea. "Electronic technology," said Nottingham, "assists the jury in a clearer understanding of the case; it helps the fact-finders; and, in the way it presents evidence, the technology appears to increase efficiency so that trials may be conducted in less time." A study is underway in federal courts across the country to determine the feasibility of procuring and installing electronic technologies. By January 1999, the committee expects to make recommendations on nationwide funding for electronic courtrooms.

"The technology shouldn't run the courtroom...it should help us conduct the most efficient proceeding possible."

White Noise and Realtime

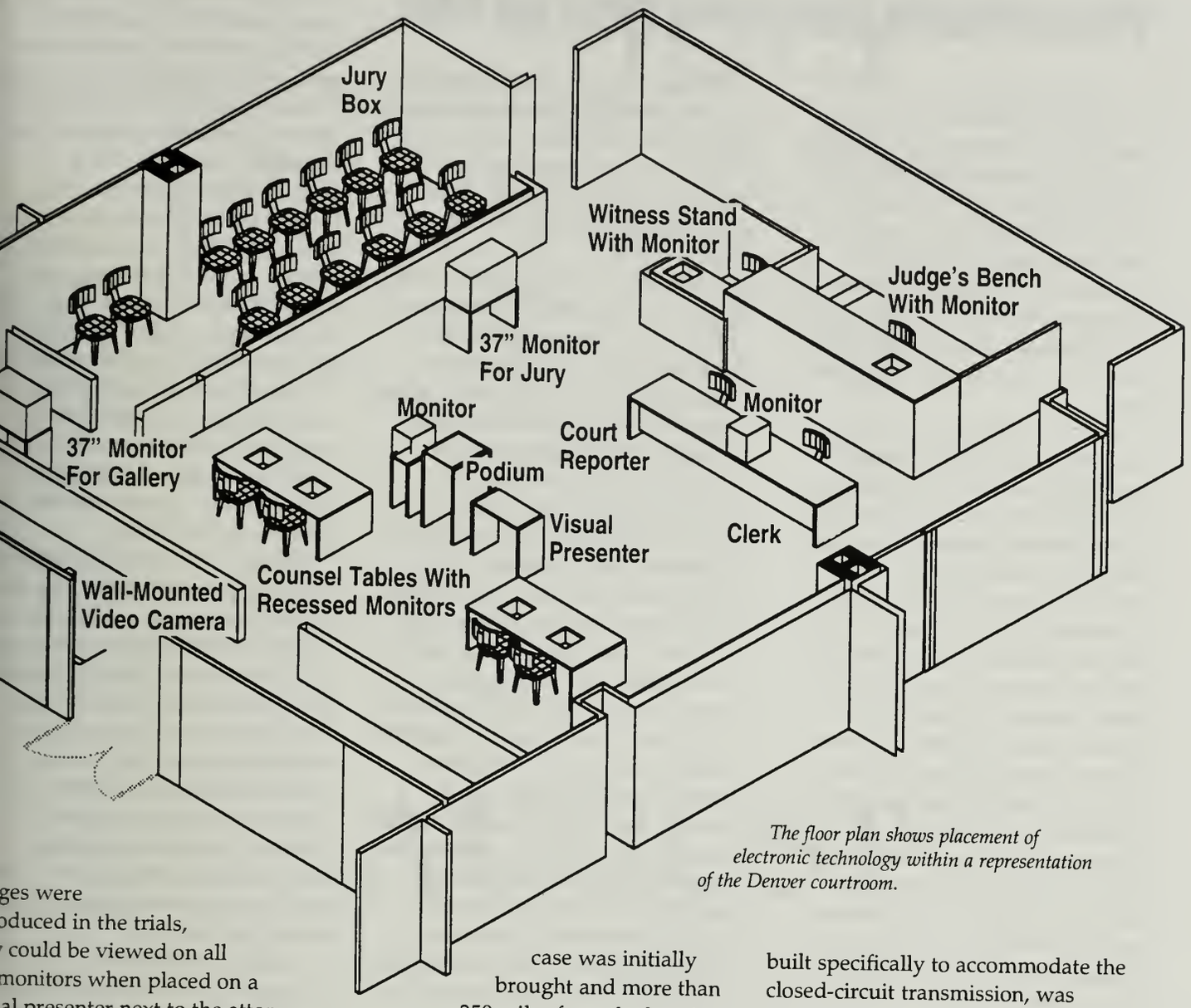
The audio system in Matsch's courtroom was designed using the *Guide Specification for Modification/ Installation of Audio Systems in U.S. Courthouses*, prepared by Administrative Office staff in cooperation with Polysonics Corporation. Microphones with mute buttons were mounted on the bench, the two counsels' tables, and the clerk's desk. The judge's bench also had a small omni-directional microphone for recording bench conferences. Microphones were mounted on the witness stand and the attorneys' podium.

Three zones of ceiling speakers controlled the volume of proceedings in different parts of the courtroom. For those times when counsel approached the bench and the judge wanted the conversation to be confidential, white noise could be piped to the jury box effectively masking the conversation.

An audio feed in the courtroom went to a nearby control room for external transmission and also to a two-channel infrared emitter in the courtroom, one channel for wireless headphones for listening assistance and the second channel for simultaneous interpretation. With this system, an interpreter did not need to be in the courtroom. During the trials, realtime transcription of the proceedings was available from the court reporter, who used an internal courtroom network and made the transcript available twice a day.

Visual Presentation

An array of electronic monitors in the courtroom guaranteed a clear view of documents, evidence and videotapes. Two large 37" monitors were provided for jurors and the gallery. Smaller monitors were at the judge's bench, the witness stand, the podium, and sunk into each counsel's table. When videotapes, photographs, documents, physical evidence, or computer-generated



The floor plan shows placement of electronic technology within a representation of the Denver courtroom.

ges were
oduced in the trials,
could be viewed on all
monitors when placed on a
al presenter next to the attor-
s' podium or when downloaded
laptop computers. The
enter was equipped with a
screen preview monitor and an
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was located at the witness
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he particularly unique feature of
ideo system—at least for a
ral courtroom—was mandated
ne Antiterrorism and Effective
h Penalty Act of 1996. That law
ired trial courts to order closed
it televising of proceedings to
nit victims of crime to watch
inal trial proceedings in cases
re the venue of the trial is
ged out of the state in which the
case was initially
brought and more than
350 miles from the location
in which those proceedings
originally would have taken place.

As a consequence, for the duration of the two trials in Denver, a single video camera with a fixed lens was mounted in a wall pocket behind optical glass above the public entrance door of the courtroom. The camera provided a wide view of only the witness stand, the judge's bench, the attorneys, and the defendant. A control room in the Denver courthouse coordinated transmission of the video camera picture and accompanying audio to an auditorium in Oklahoma City.

The digital intercity transmission service, based on fiber optics and built specifically to accommodate the closed-circuit transmission, was available to the court as needed or within 15 minutes of the court's request. Encryption devices were included at both ends of the transmission and were under the control of court-appointed personnel. Most important, over several months of hearings and trial proceedings, the transmission was secure, uninterrupted and unintercepted.

What, if anything, would Manspeaker do differently if he were starting over to construct an electronic courtroom? "Not a thing," Manspeaker said. "Everything we needed was in place. We asked for it, and the vendors and the Administrative Office saw that it was installed."

Videoconferencing Links Federal Courts and Public

A circuit judge in the Tenth Circuit is unable to travel, but can participate in appellate proceedings when videoconferencing links the court in Cheyenne, Wyoming, to the court in Denver, Colorado. In the Western District of Texas, the testimony of an emergency room physician in Del Rio is heard by the jury, defendant, and lawyers in a trial three hours away in San Antonio.

From its beginning as a pilot program in a handful of federal appellate, district, and bankruptcy courts, videoconferencing has grown to link federal courts with remote locations, prisons, and far-flung divisional courts. The U.S. attorney's offices, the U.S. Marshals Service, and the Federal Bureau of Prisons also have videoconferencing programs that are accessible to the courts or are conducted in cooperation with federal court programs. The videoconferencing experience, although not for all judges or counsel who may prefer face-to-face meetings or who may feel there is an unfair advantage to only one party being present in the courtroom, is gaining acceptance in federal courts across the country.

Appeals Courts

In appellate courts, videoconferencing lets attorneys, parties, and judges save the time they might expend travelling to attend oral arguments, rehearings en banc, settlement conferences and Appellate Rule 34(f) decisions on the briefs. Appellate courts are an especially suitable venue for videoconferencing because, unlike trial courts, law, not evidence, is argued at this level. Witness testimony is not part of the appellate proceedings, documents do not need to be produced for viewing by a jury, and there are a smaller number of participants. Videoconferencing offers appellate panels increased scheduling flexibility and time savings. In some circuits where motions proceedings are handled routinely by teleconferencing, videoconferencing may be an improvement.

Currently, the Second, Tenth and District of Columbia Circuits make use of videoconferencing. With support from the Administrative Office, the Tenth Circuit began using videoconferencing with oral arguments in criminal cases, then expanded to civil cases, and later accommodated judges in remote locations at Kansas City, Wichita and Cheyenne. The process has been accompanied by some technological tweaking, according to Judge John C. Porfilio (10th Cir.). "We've gone to three video cameras for a larger image of the bench for the benefit of the lawyers, and we've increased the broadcasting power. We'd like to improve the delay time, too. It's disconcerting at first to see lips move and then hear the voice. However, I've found that the lawyers who participate in videoconferenced sessions, once they get over the initial impact of arguing in front of a camera, argue just as they would in a courtroom." And, Porfilio says, lawyers don't mind going to Oklahoma City from Tulsa, for example, if it saves them a day trip to Denver. In fact, last September the situation was reversed when the court sat in Oklahoma City and the proceedings were videoconferenced to lawyers in a Denver courtroom.

District Courts

Following a two-year pilot study conducted in four district courts, the Judicial Conference, in July 1996, authorized funding to district courts meeting certain caseload and other criteria for the use of videoconferencing in prisoner civil rights pretrial proceedings. Presently 34 district courts have qualified for participation in the project, contingent on the satisfaction of all project criteria, including the requirement that program costs are shared with the participating state, local, or federal prison authorities. This Judicial Conference initiative anticipated the 1996 Prison Litigation Reform Act, which included the requirement that federal courts "to the extent practicable," conduct prison condition pretrial proceedings "in which the prisoner's participation is required or permitted" by telephone, videoconference, or other telecommunications technology, without removing the petitioner from the prison facility.

While the chief value of videoconferencing prisoner proceedings lies in the travel time saved by judicial officers and improved scheduling, videoconferencing also eliminates security concerns involved in the transportation of prisoners. The technology is routinely used for pretrial hearings with inmates to screen civil rights complaints. However, courts also use videoconferencing for other matters when there are compelling geographic and scheduling concerns.

Judge Fred Biery (W. D. Tex.) remembers not so long ago when the Del Rio courtroom in the Western District of Texas was regularly jammed with 50 to 60 defendants awaiting sentencing, while another 50 people would be awaiting arraignment.

"In the Western District of Texas," said Biery, "we've seen the number of felony defendants go from 150 to 800 in the last five years. Most of these are handled in the Del Rio divisional courthouse where there is no full-time judge." According to Biery, defendants for the once-a-month proceedings at the court were bused from all over the district.

"We could get through 50 to 60 sentencings a day if we moved along

CALENDAR DATES FOR THE THIRD BRANCH

Vol. 30 Number 6 June 1998

JULY

1-3 **Wednesday-Friday**
National Workshop for Magistrate Judges I

9-11 **Thursday-Saturday**
Committee on Codes of Conduct

20-21 **Monday-Tuesday**
Committee on the Budget

AUGUST

10-11 **Monday-Tuesday**
Executive Committee

17-18 **Monday-Tuesday**
Committee on Financial Disclosure

17-19 **Monday-Wednesday**
Video Orientation for Newly Appointed Magistrate Judges

17-19 **Monday-Wednesday**
National Workshop for Bankruptcy Judges II

THE THIRD BRANCH

Vol. 30 Number 6 June 1998

CHIEF DEPUTY CLERK, Northern District of Georgia

The U.S. District Court for the Northern District of Georgia, in Atlanta, is accepting applications for the position of chief deputy clerk. An undergraduate degree from a college or university of recognized standing and a minimum of six years of progressively responsible administrative experience is required, and a demonstrated understanding of management organization, including at least three years in a position of substantial management responsibility. Applicants must have strong analytical, interpersonal and writing skills. The incumbent is responsible for the administration and supervision of the day-to-day operation of a clerk's office with 80 employees in four locations and acts for the clerk in his absence. Salary: JSP-16, $90,316-$117,407, dependent upon qualifications and experience. Applications and resumes may be sent to Luther D. Thomas, Clerk of Court, 2211 U.S. Courthouse, 75 Spring Street, SW, Atlanta GA 30303-3361, Attn: Human Resources/Personnel (Vacancy Announcement 98-19). **Applications must be received by the close of business on July 10, 1998.**

BANKRUPTCY JUDGE, Western District of Michigan at Grand Rapids

Applications are being accepted for the position of bankruptcy judge in the Western Bankruptcy District of Michigan. The appointment is a 14-year term. Salary $125,764. Full public notice with qualification standards is posted in the offices of the clerks of the U.S. Court of Appeals for the Sixth Circuit and U.S. District and Bankruptcy Courts for the Western District of Michigan. For further information and application forms, contact the Office of the Sixth Circuit Executive, U.S. Court of Appeals for the Sixth Circuit, 503 Potter Stewart United States Courthouse, Cincinnati, Ohio 45202-3988, phone (513) 564-7200. **Deadline for receipt of applications is August 14, 1998.**

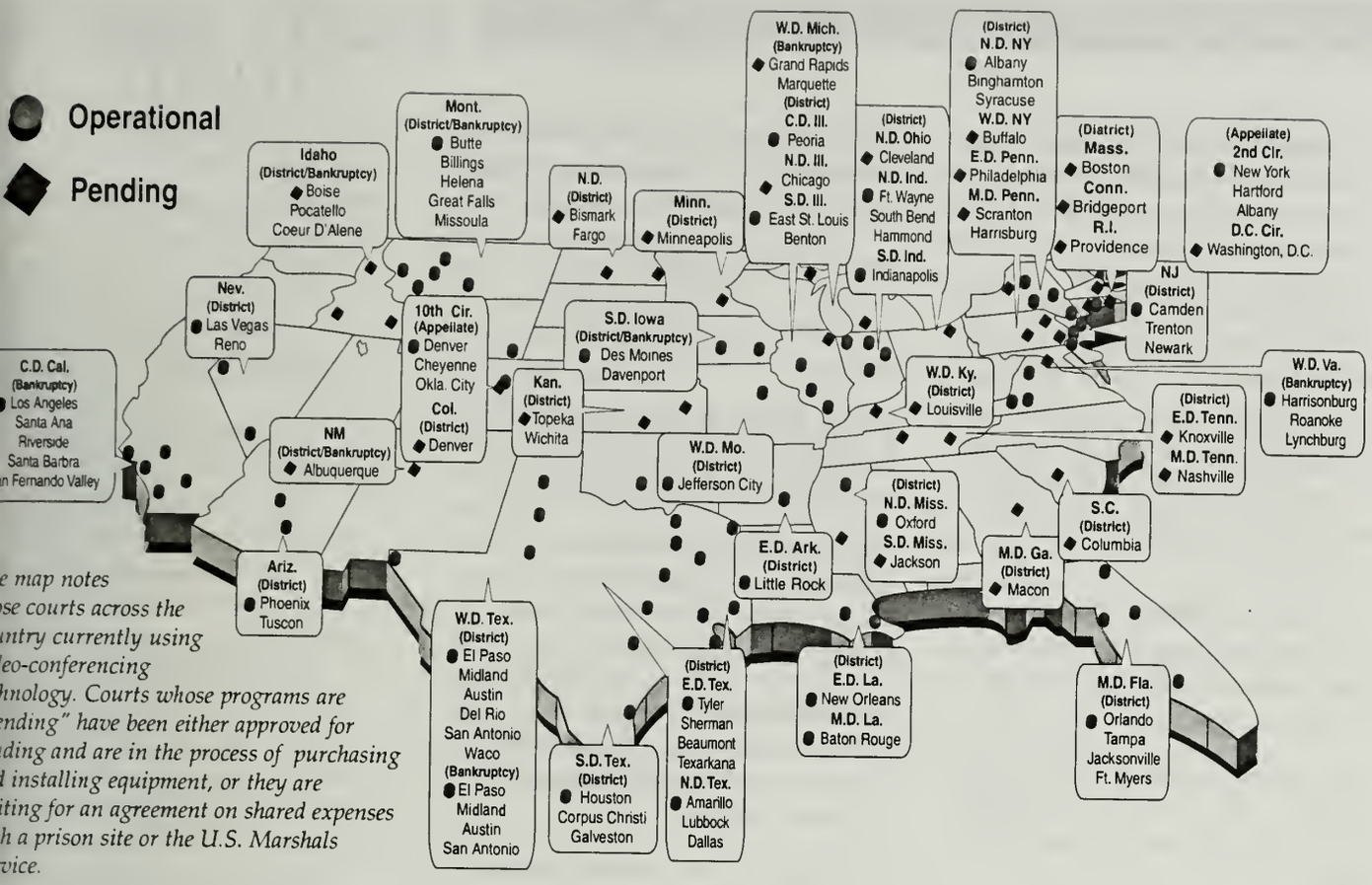
DEPUTY CHIEF U.S. PROBATION OFFICER TYPE II, U. S. Probation, Eastern District of Washington

The Eastern District of Washington is seeking qualified applicants for the position of deputy chief U.S. probation officer II, (JSP 14-15). Incumbent to assume full responsibilities of chief U.S. probation officer, without further competition, upon retirement of current incumbent in May, 1999. Please send confidential letter of interest and resume to: Human Resource Department, U.S. Probation, P. O. Box 306, Spokane, WA 99210-0306. For additional information contact Nancy Wideman, Personnel Specialist, (509) 353-3240. **Application deadline: August 15, 1998**

U.S. MAGISTRATE JUDGE, Southern District of New York

The U. S. District Court for the Southern District of New York is accepting applications for the position of full-time magistrate judge at New York, NY. The duties of the position are demanding and wide ranging and will include: (1) conduct of preliminary proceedings in criminal cases; (2) trial and disposition of misdemeanor cases; (3) conduct of various pretrial matters and evidentiary proceedings on delegation from the judges of the district court; (4) trial and disposition of civil cases upon consent of the litigants; and (5) assignment of additional duties not inconsistent with the Constitution and laws of the United States. Salary: $125,764. Candidates should submit applications to: Clifford P. Kirsch, District Court Executive, U.S. Courthouse, Room 820, 500 Pearl Street, New York, NY 10007-1312. Telephone: (212) 805-0500. An original plus 12 copies of a cover letter, resume and application must be received by June 26, 1998. Application forms are available in the District Executive's Office.

EQUAL OPPORTUNITY EMPLOYERS



e map notes se courts across the untry currently using leo-conferencing hnology. Courts whose programs are ending" have been either approved for ding and are in the process of purchasing d installing equipment, or they are iting for an agreement on shared expenses h a prison site or the U.S. Marshals vice.

d didn't take lunch," said Biery. hese weren't complicated cases. t it was very impersonal." Several nths ago, the district began video- nferencing sentencings from the n Antonio court. "We try to do ween eight and 10 sentencings ery Thursday morning from San tonio," said Biery. "We do them ividually and we give them the ention I think they deserve. The jority of the defendants don't ak English, so we use a translator. ink with the videconferencing defendant has a better perspec- e on what is happening. With the neras, it's like they are sitting six away. There is a one-on-one tionship that just wasn't possible ore."

Some courts have taken the ject a step further by using the nology to take witness testimony rials. Other courts plan to expand ther courtroom proceedings and st are regularly using video-conferencing for administrative and training functions. However, in the federal courts, the legality of using videoconferencing to conduct certain criminal proceedings is in question. The Ninth Circuit has held that videoconferencing of arraignments violates Rules 10 and 43 of the Federal Rules of Criminal Procedure, which together require the presence of the defendant in open court.

Concerns also have been raised about the use of videoconferencing for in-court proceedings involving defendants represented by attorneys appointed under the Criminal Justice Act. Some of these concerns may be allayed by the success of its use in a steadily increasing range of proceedings and its obvious advantages to parties under special circumstances. Duke Argetsinger of the AO's Court Administration Policy Staff, who has worked extensively on videoconferencing projects since the inception of its use in federal courts observed, "Videoconferencing cannot replace the physical presence of a judge. It is a tool to enhance and supplement the services that the court provides to the public. Under unique geographic and caseload circumstances, it enables the court to do its work better."

Bankruptcy Courts

Videoconferencing in the bankruptcy courts is used for a wide range of contested and non-contested matters. Bankruptcy courts can make good use of videoconferencing because of the numerous hearings that are required under federal bankruptcy law. The use of videoconferencing to replace travel by the judge, counsel, and parties can produce significant savings in travel time and costs. For example, under a pilot program conducted by the Judicial Conference, the U.S.

See Video on page 12

JUDICIAL MILESTONES

Appointed: Robert T. Dawson, as U.S. District Judge, U.S. District Court for the Western District of Arkansas, April 15.

Appointed: Garr M. King, as U.S. District Judge, U.S. District Court for the District of Oregon, May 1.

Appointed: Michael Patrick McCuskey, as U.S. District Judge, U.S. District Court for the Central District of Illinois, May 4.

Appointed: G. Patrick Murphy, as U.S. District Judge, U.S. District Court for the Southern District of Illinois, May 4.

Appointed: Johnnie B. Rawlinson, as U.S. District Judge, U.S. District Court for the District of Nevada, May 2.

Appointed: E. Robert Goebel, as U.S. Magistrate Judge, U.S. District Court for the Western District of Kentucky, May 11.

Appointed: John A. Houston, as U.S. Magistrate Judge, U.S. District Court for the Southern District of California, April 27.

Appointed: E. Clayton Socfield, III., as U.S. Magistrate Judge, U.S. District Court for the Northern District of Georgia, May 4.

Appointed: Nancy A. Vecchiarelli, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Ohio, April 20.

Elevated: Bankruptcy Judge James D. Gregg, to Chief Judge, U.S. Bankruptcy Court for the Western District of Michigan, succeeding Laurence E. Howard, February 27.

Senior Status: Judge William D. Browning, U.S. District Court for the District of Arizona, May 14.

Senior Status: Judge Lenore C. Nesbitt, U.S. District Court for the Southern District of Florida, July 19.

Senior Status: Judge Joseph H. Rodriguez, U.S. District Court for the District of New Jersey, May 22.

Retired: Magistrate Judge Robert A. Del Campo, U.S. District Court for the Central District of California, May 11.

Retired: Magistrate Judge Ronald A. Fonseca, U.S. District Court for the Eastern District of Louisiana, May 20.

Retired: Magistrate Judge Robert B. O'Connor, U.S. District Court for the Western District of Texas, March 31.

Resigned: Magistrate Judge Tracy L. Myers-Dumm, U.S. District Court for the District of Hawaii, May 16.

Deceased: Judge Patrick E. Carr, U.S. District Court for the Eastern District of Louisiana, June 1, 1998.

Deceased: Judge David W. Dyer, Court of Appeals for the Eleventh Circuit, June 7, 1998.

Deceased: Judge George F. Gunn, Jr., U.S. District Court for the Eastern District of Missouri, May 20, 1998.

Deceased: Judge Daniel H. Huyett, III, U.S. District Court for the Eastern District of Pennsylvania, May 1.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of June 1, 1998

Courts of Appeals	
Vacancies	22
Nominees	13
District Courts	
Vacancies	53
Nominees	30
Court of International Trade	
Vacancies	1
Nominees	1
Courts with "Judicial Emergencies"	34

For more information on vacancies in the Federal Judiciary visit our website at www.uscourts.gov.

or Judges, a Recusal List Reminder

Title 28 U.S.C. § 455 places on all dges the responsibility for avoiding nflicts of interest between their ancial interests and their assigned ses. It requires a judge not only to informed about his or her per- nal financial interests but also to ake a reasonable effort to be formed about the personal finan- l interests of his or her spouse and nor children. Recent media verage of judges who have failed stay current should be fair warn- g of the importance of updating ancial interest lists.

Section 455 is mirrored by non 3C(2) of the Code of Conduct United States Judges, which poses on judges a duty to keep ormed so that they can recuse mselves from cases in which they ve disqualifying financial hold- gs. In accordance with Canon (1)(c), judges are required to use themselves whenever they or ir spouses or minor children iding in the household have "a ancial interest in the subject matter controversy or in a party to the ceeding."

Administrative Office Director nidas Ralph Mecham wrote to ges in February emphasizing the portance of up-to-date financial rmation, as did Judges A. mond Randolph, chair of the nference Committee on Codes of nduct, and Frank Magill, chair of Conference Committee on ancial Disclosure, in a subsequent morandum to all judges. Mecham ed that it is important to ensure appropriate screening mecha- ns are in place to prevent possible flicts from occurring. "Most rts already have such screening cedures in place in the clerk's ce, in chambers, or both," cham said. "Nevertheless, it is ays prudent to ensure that the ncial information these proce- dures rely upon is complete and up-to-date." Randolph and Magill also urged that care should be taken to include all disqualifying financial interests—whether or not recorded on other reporting forms—when a recusal list is compiled.

The most common form of disqualifying financial interest is the ownership or control of securities. However, a judge's need to recuse can be minimized, depending upon the type of investment. For example, mutual fund investments will usually eliminate the risk of conflicts of interest involving individual companies, and the number of stocks can be limited to an easily managed number. Turning over investments to a trust or money manager, however, does not relieve a judge of his or her legal and ethical duties to remain informed about financial holdings.

In some courts, clerks of court maintain the recusal lists. In others, judges or their secretaries keep track of disqualifying connections. Even if the court has automated the process, automatically notifying judges of conflicts, the system is only as good as the information entered. Judges should review and update lists on a regular basis. An investment list can be supplied to the court officials responsible for reviewing new case assignments so that cases are not assigned to judges who own stock in a party. The list also can be used in chambers for comparison with the current caseload to ensure that an inheritance, gift, or new purchase of stock does not involve any parties in pending cases.

Appellate Commission Wraps Up Hearings

The governor of Washington, a U.S. senator, a state attorney general, bar association presidents, law professors and numerous federal judges were among more than 70 witnesses who testified at public hearings held by the Commission on Structural Alternatives for the Federal Courts of Appeals in San Francisco and Seattle in May. The hearings were the last in a series of hearings held since March.

The Commission also has conducted hearings in Atlanta, Dallas, Chicago, and New York. A total of 90 witnesses testified at these public hearings, and statements and comments were received from dozens more.

The Commission will spend the next few months reviewing the submitted information, gathering additional data, analyzing the findings, and drafting an initial report for public comment.

Congress created the Commission late last year to study the structure and alignment of the federal appellate system, with particular reference to the Ninth Circuit. In December 1998, the Commission is to report to the President and Congress any recommendations for changes in circuit boundaries or structure, consistent with fairness and due process. Retired Supreme Court Justice Byron White is chairman of the Commission.

More information about the Commission and testimony from all hearings can be found at **http://app.comm.uscourts.gov/**.

Finding the Balance in Federal-State Jurisdiction :

An Interview with Judge Stephen H. Anderson

Judge Stephen H. Anderson was appointed to the U.S. Court of Appeals for the Tenth Circuit in 1985. A member of the Committee on Federal-State Jurisdiction since 1993, he steps down as chair of the committee in the fall after a three-year term.

Q: What are the responsibilities of the Committee on Federal-State Jurisdiction?

A: Broadly speaking, the committee reviews congressional initiatives affecting the jurisdiction of the federal courts and the allocation of jurisdiction between the federal and state courts. Additionally, the committee is charged by the Conference to serve as the liaison to the state courts. To enable us to perform this unique role effectively, the Chief Justice and the Judicial Conference authorized four state supreme court chief justices to serve among our 15 members. In addition, the committee works closely with the Conference of Chief Justices (CCJ), the policy-making body for the state courts, and the National Center for State Courts, its support organization.

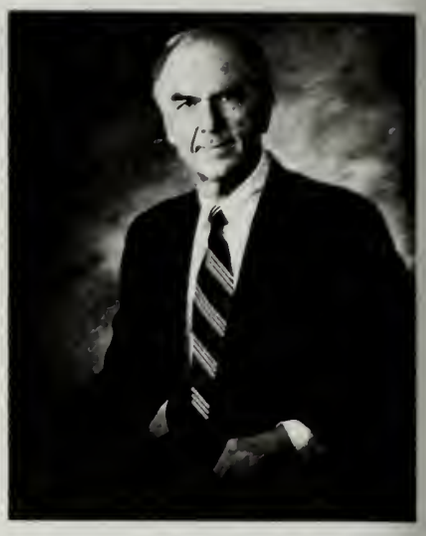
Q: You've chaired the committee since 1995. In that time, what have been some of the significant issues with which your committee has dealt?

A: It is impossible in this interview to list all of the important issues that the Federal-State Jurisdiction Committee has addressed over the past few years. At any given time, we are following up to 20 bills, including both draft proposals and bills that have been introduced.

Some of the more significant topics the committee has studied recently include property rights legislation, proposals to limit the remedial powers of the federal courts, prison litigation amendments, proposals to expand the jurisdiction of the Court of Federal Claims, mass tort litigation, and the constitutional structure of territorial courts. Also, many bills in Congress seek to alter the relationship between the states and the federal government. The committee studies such proposals to determine whether the unique roles of both court systems have been recognized.

Q: How have federal-state relations evolved during your tenure?

A: The relations between the federal and state judiciaries always have been good and have never been better. This positive relationship developed long before my tenure as chair, and I have sought to enhance this association. For example, I instituted for every committee meeting a *Report from the State Courts*, during which the senior chief justice member presents to the committee an overview of significant issues facing the state courts. Also, I have continued the valuable tradition of attending the annual and mid-year meetings of the CCJ. I have been joined in representing the federal Judiciary by Judge Fred Motz, who was then a member of the committee, and also more recently by Chief Judge Henry Politz, who has been designated by the Executive



Judge Stephen H. Anderson

Committee as a liaison to the CCJ, as well as to our committee. I must add that our state-federal relationship is strong, in part, because of the harmonious relationship between staff of the National Center for State Courts and staff in the Office of Legislative Affairs of the Administrative Office.

I continue to believe that joint educational programs and seminars are excellent tools to improve the understanding of the inter-relationship of such courts.

Q: How do the views of the Conference of Chief Justices compare to those of the Judicial Conference?

A: In recent years, the views of the two policy-making bodies have been similar on numerous occasions, such as in the areas of property rights legislation, victims' rights, and health care legislation. But such consistency, when it occurs, is not entirely coincidental. Instead, I believe that it is one of the positive by-products of the strong relationship we are fostering between the state and federal judiciaries. We have listened to each other's viewpoints and thus have been able to develop more fully our recommendations to the Conference. When mutual

ncerns emerge, this commonality hances congressional receptivity to e views of the Judicial Conference, rticularly when our view suggests at certain jurisdiction lies more propriately in the state courts.

Q. How has the allocation of jurisdiction between federal d state courts shifted?

A. This allocation has been of central concern to the com-ttee. During the past 10 years, ngress has sought frequently to ate federal court jurisdiction in as traditionally exercised prima- by the state courts. This often urs with respect to specific crim- l activity and has led to many ates and state-federal conferences cerning federalization. But deralizing" a cause of action also be applied generally when Con-ss creates federal jurisdiction for ditionally state court civil actions. The Federal-State Jurisdiction mmittee has studied numerous posals that would shift litigation n the state courts to the federal rts. A guiding principle for us has n the view of the Judicial Confer-e as stated in the *Long Range Plan he Federal Courts*. Congress uld be encouraged to conserve federal courts as a distinct cial forum of limited jurisdiction. le certain criminal and civil ons occasionally may justify ansion of federal jurisdiction, federalization efforts typically driven by political and popular sures that can be expected to inue. As a result, I think it will nportant for the Judiciary to inue to encourage Congress to ider the unique role intended by constitutional framers for the ral courts.

Q. As a representative of the Judicial Conference, you've fied before congressional committees a number of times on a variety of issues considered by your committee. Generally, how has Congress received the Conference views on legislation?

A. Very favorably. Whether I have testified in support or opposition to a bill, members of Congress have been receptive to the views of the Conference. A mutual respect exists between the legislative and judicial branches, and any opportunity to foster our communication is appreciated on both sides.

While letters often are sent to congressional leaders sharing our views of the Conference, testifying before Congress is an excellent opportunity to engage in a give-and-take on the potential implications of legislation for the federal courts. It reminds me, in a way, of oral arguments and the chance to explain with conviction the decisions of the Conference. Being subject to a five-minute time limit also is a humbling reminder of the restrictions we as judges place on lawyers appearing before us.

Before we move on, I would like to take this chance to compliment the outstanding work of the staff of the AO's Office of Legislative Affairs, under the fine leadership of Mike Blommer, and in particular the staff of our committee, Karen Kremer and Mark W. Braswell. Much of the informational sharing with Congress occurs at a staff level, and these efforts are ongoing and overwhelming. The Judiciary should be aware of the valuable and effective behind-the-scenes work that is done by the Administrative Office staff, under the careful direction of Leonidas Ralph Mecham.

Q. You also testified during the last congressional session on H.R. 1544, the Federal Agency Compliance Act. The bill has Conference support. Why?

A. Simply stated, the Conference supports this bill because it brings respect to the rule of law. This support was announced officially in the *Long Range Plan for the Federal Courts*, when the Conference approved a recommendation calling upon Congress to pass legislation that would generally prohibit agencies from adopting policies of non-acquiescence to controlling precedents of appellate courts. As an appellate judge, I have welcomed the opportunity to testify on the act and bring congressional attention to this issue. We were delighted that Representative George Gekas (R-PA) introduced this legislation and moved it successfully through the House of Representatives. Our committee staff now is providing assistance to the office of Senator Ben Nighthorse Campbell (R-CO), who has introduced a similar bill.

Q. As an out-going chair, what advice would you share with new committee chairs?

A. Act cautiously. I cannot think of any two words that could better describe what might serve as a dependable compass for others. So many issues come before the chair and the committee, many of which demand immediate attention. It is often tempting, for example, to oppose immediately a bill or a provision that seems to be an attack on the Judiciary. Calm study, however, leads to a reasoned comment that will help the Conference, and in turn Congress, to contemplate a bill's impact on the courts. As long as full debate is encouraged and seasoned advice is sought on an issue, I believe that committees can act with the degree of due process and careful deliberation that we have come to expect in our courtrooms.

Video continued from page 7

Bankruptcy Court for the Western District of Texas pioneered the use of videoconferencing to conduct hearings between divisional locations 400 miles apart. The district now has expanded use of technology to four additional divisional locations. Bankruptcy Appellate Panels, especially, find that videoconferencing eases scheduling, while reducing travel time because panel judges are often separated by considerable distances within their circuits.

In Iowa, federal courts are linked to the state's fiber optic network, which has one point of presence in each of the state's 99 counties. The network also can link to other sites throughout the country. An Iowa bankruptcy trustee recently used the network to link a meeting of creditors to a debtor in Vancouver, Canada.

Bankruptcy Judge Lee Jackwig (S. D. Iowa) has used videoconferencing in bankruptcy hearings since 1996. To date, most hearings have been between Davenport and Des Moines, where Jackwig sits. "Instead of traveling six hours round trip to Davenport to handle routine matters every other month, I run down to the third floor in our courthouse and conduct the hearings. Now I'm 'virtually' in Davenport every month and can be there with 10 minutes notice." At times Jackwig has had parties in up to five locations participating in a videoconferenced hearing. "I try to maintain the traditional courtroom feel as much as possible," said Jackwig. "In the beginning, the camera is pulled back to show the bench, the door through which I'll enter, and the deputy standing to say 'All rise.' And everyone at the connecting site is expected to rise because they are part of the courtroom." All parties at all locations are able to see each other without any delay in the picture or the sound because of the state's fiber optic network.

Once the hearing begins, Jackwig likes to show a picture-within-a-picture on the video screen, of her sitting at the bench and the counsel table. Her own video screen shows the entire courtroom. "I feel I'm almost better able to assess the credibility of the witnesses on the videoconferencing screen," said Jackwig, "because in at least one of the trial courts, the judge has a partial view of the witness. When they're on the screen, I see them face to face."

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Newsletter of the Federal Courts

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July 1998

stimony Shows Increasing Workload is Straining Judiciary's Resources

use Holds Oversight aring on Judiciary

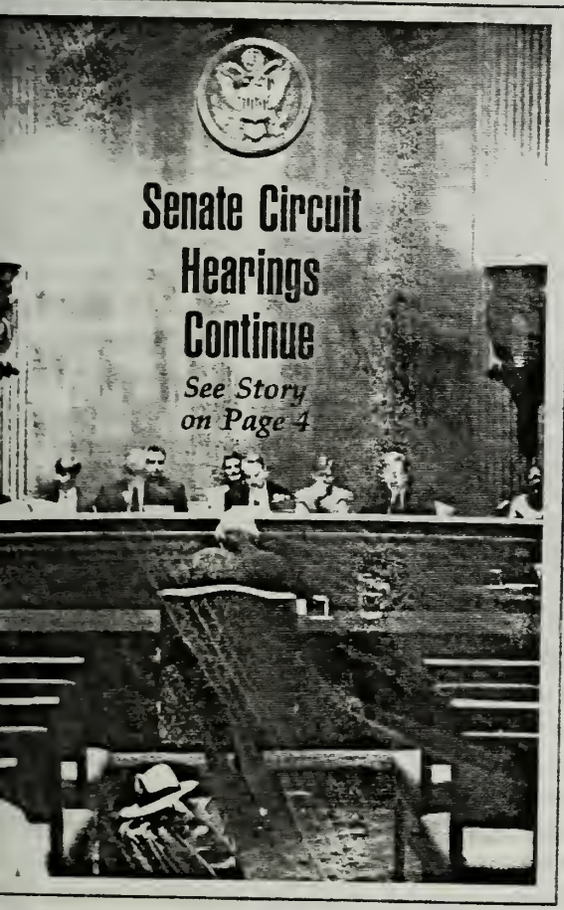
n increasing workload is driving liciary-wide need for resources, ding adequate funding and ng, while prompting a call to address the trend to federalize traditionally state crimes.

"One of the greatest challenges confronting the federal Judiciary is to continue providing just and timely adjudication of a burgeoning federal docket," Judge Wm. Terrell Hodges (M.D. Fla.) told the House Judiciary Subcommittee on Courts and Intellectual Property last month. The subcommittee, chaired by Representative Howard Coble (R-NC), held the first oversight hearing on the Judiciary since 1993. Hodges, chair of the Judicial Conference Executive Committee, was accompanied by Administrative Office Director Leonidas Ralph Mecham and by Judge Rya Zobel, Director of the Federal Judicial Center.

"The House Judiciary Committee is charged with the responsibility of oversight over the administration of the Judiciary to ensure that it is utilizing its funds efficiently and effectively," Coble said. "Last November, Congress approved over $3.8 billion for the federal Judiciary for fiscal year 1998, which is an eleven percent increase over approved funding in fiscal year 1997. . . .The subcommittee will focus on how this money is allocated to the different offices and programs within the Judiciary and whether or not it is being utilized efficiently and effectively." Coble said several areas of the budget would be discussed, including the rising costs of the Federal Defender Services program; courtroom use and courtroom construction; the Judiciary's use of high-tech products and services and their impact on operating costs and efficiency in administering the judicial process; and concerns about judicial travel and judicial conflicts of interest.

Hodges told the subcommittee that the workload of the Judiciary is continually expanding; he traced the expansion of federal caseloads to new legislation federalizing additional crimes, such as the pending juvenile justice bills. "Despite productivity gains by judges," said Hodges, "with no increases in Article III judgeships since 1990 or bankruptcy judge-

See ***Oversight*** *on page 2*



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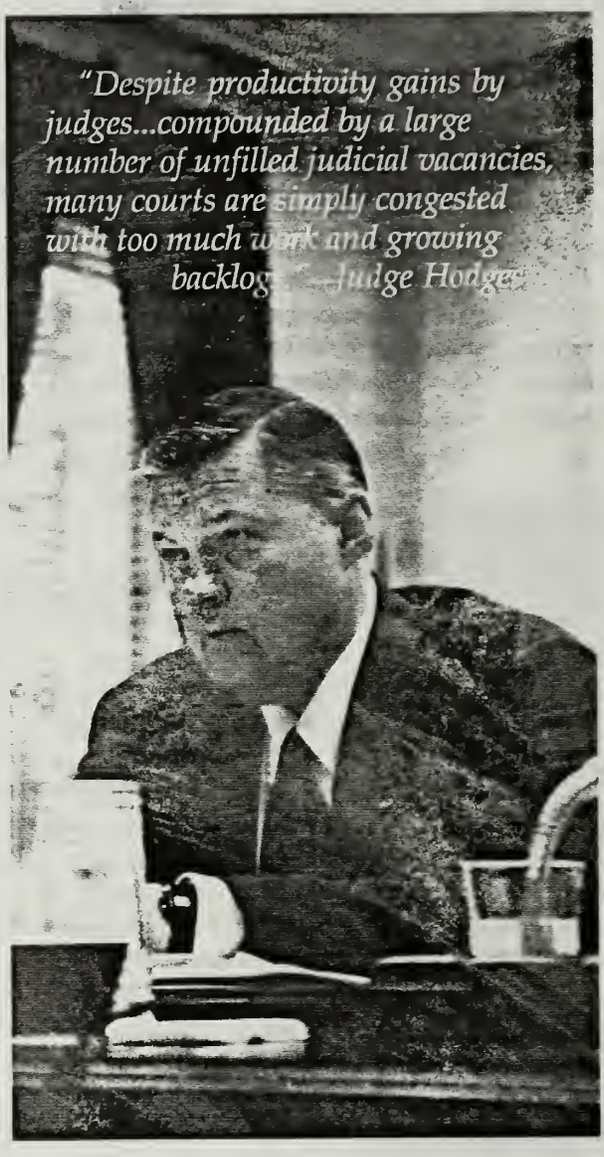
Oversight continued from page 1

ships since 1992, compounded by a large number of unfilled judicial vacancies, many courts are simply congested with too much work and growing backlogs."

The Judiciary needs adequate resources to meet the burgeoning workload. "[W]e are thankful that Congress has generally appropriated a high percentage of the funds requested by the federal courts," said Hodges. "The Judiciary also needs sufficient funding to meet its court security, courthouse facility, and defender services needs." There has been no funding for the courthouse construction program for two years, which has worsened operational and security problems in aging and obsolete court facilities. Funds also are needed to increase the hourly rate for Criminal Justice Act panel attorneys, to attract attorneys with the skills and knowledge to provide adequate defense services. Most panel attorneys have received only a $5 increase over the past 12 years.

Hodges also addressed a needed 1999 pay adjustment for federal judges and members of Congress; the Judiciary's need to be reimbursed for its costs related to the Department of Justice's seizures and forfeitures of criminal assets; and the increasing tendency by members of Congress to amend the federal rules by statute, effectively bypassing the Rules Enabling Act. He also highlighted efforts the Judiciary has made to identify ways to streamline operations, increase the use of technology, and ensure that resources are deployed appropriately and used efficiently.

Coble asked what the Judiciary was doing to address concerns about judges who fail to recuse themselves from cases involving companies in which they own stock. Hodges assured the subcommittee that the Judiciary has taken steps to be certain judges are aware of their responsibilities, but that broad public disclosure of judges' financial records may raise security concerns for judges and their families.



Mecham, in his testimony before the subcommittee, focussed on the AO. Created by Congress in 1939, the AO supports over 30,000 Judiciary employees, including more than 2,000 Article III, bankruptcy, and magistrate judges, in over 800 locations throughout the U.S. and its territories.

"Our policy and support respo bilities touch on all aspects of jud operations," Mecham told the subcommittee. "I believe no othe federal agency has such far-reach responsibilities as our own." He pointed to the major strides the A has made in the last five years, including the delegation of admi trative decision-making to the co the improvement of commu cations with the Data Comm cations Network, videoconferencing, intranet sites, and electronic public access to records; and the technological improvement systems and processes to ea the courts' workloads. The A is aggressively pursuing the of automated technology to reduce costs and improve productivity and business practices.

"Despite the successes of recent years," Mecham cautioned, "there are several ar of concern: the need for add tional AO staff, whose num has grown at a considerably slower pace than has the Ju ciary overall; the lack of fun for courthouse construction the past two years; the erosi of judges' salaries; and the n for improvements in the em ployee benefits available to Judiciary employees."

Mecham concluded his testimony by saying the AO continue to seek improvem and efficiencies in Judiciary operations. "We have met t challenge in the past," said Mecham, "and will continu do so in the future to ensure equ justice for all Americans."

In her testimony before the subcommittee, Zobel highlighte some of the areas in which the Federal Judicial Center has beer active, including satellite televis education through the newly launched Federal Judicial Telev

From right: AO Director Leonidas Ralph Mecham; Judge Wm. Terrell Hodges, chair of the Judicial Conference Executive Committee; and FJC Director Judge Rya W. Zobel briefed House subcommittee members on the state of the Judiciary at the oversight hearing last month.

Network, in-court workshops, on-line computer conferencing, and the production of educational CD-ROMS and videocassettes. In response to subcommittee concerns about judges attending private judicial education seminars sponsored by organizations with specific policy goals, she reminded the subcommittee that "In all our judicial education—whether by seminars, by manuals and monographs, or through video broadcasts—we ensure that judges receive balanced and practical explanations of the governing law and its implications, and of the economic and scientific factors that increasingly affect litigation." Zobel said that the FJC, within the limits of its resources, keeps judges up-to-date on changes in the law, as well as changes in appellate case law and developments in related fields. Approximately three-fourths of the FJC's resources are committed to education and training and the remainder to research and evaluation. Zobel welcomed suggestions from the subcommittee regarding FJC programs and priorities and invited members and their staffs to attend FJC seminars and workshops, to view satellite broadcasts, and to use any of the FJC research products.

Judiciary's Appropriations Bills Move Forward

Congress is picking up the pace in the race to have all the appropriations bills passed before the planned October adjournment. In the week before the July 4th recess, the House and Senate moved the Judiciary's appropriations bills several steps further along in the process. So far, the percentage growth in funding provided for the Judiciary in both the House and the Senate bills is higher than the other agencies, with only a few exceptions.

The House Appropriations Subcommittee on Commerce, Justice, State and the Judiciary completed mark-up of the Judiciary's fiscal year 1999 appropriations bill June 24. The Judiciary had requested an obligational level of $4.10 billion for FY99. The House Subcommittee, according to preliminary reports, recommended total obligation funding for the Judiciary of $4.01 billion. This is a 6.8 percent increase over current estimated FY98 obligations. The full Appropriations Committee was expected to consider the bill in mid-July and make its report.

In the Senate, the full Appropriations Committee marked up the Judiciary's 1999 appropriations bill, giving the Judiciary $3.93 billion in total obligations. This is a 4.4 percent increase over FY98 obligations. The Senate subcommittee had a smaller allocation of money to provide to its agencies than did the House, so it is not surprising that its mark for the Judiciary is less. The bill also provides a cost-of-living adjustment for justices and judges in FY99. The Senate report language includes several directives regarding courtroom technology, a study of courtroom utilization, reporting quarterly on cost containment initiatives in defender services, and studying the costs and benefits of reviving post-conviction defender organizations at the state or federal level. The Judiciary is planning to try to clarify and modify some of this report language as the appropriations process continues.

When Congress returns from its August recess, it will have two reasons to act quickly on the appropriations bills. Not only will the new fiscal year start October 1, but the members will want to return to their districts or states to campaign for congressional elections. Hopefully, these pressures will help smooth the path to final passage of the Judiciary's appropriations bill.

Senate Circuit Hearings

Judgeships Examined in 6th, 7th and 10th Circuits

The Sixth, Seventh, and Tenth Circuits' judgeship allocations came under congressional scrutiny last month. Members of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts heard from Chief Judges Stephanie K. Seymour (10th Cir.) and Richard A. Posner (7th Cir.) on the judgeship allocations, caseload filings, and caseload management within their respective circuits. Chief Judge Boyce F. Martin Jr. (6th Cir.) submitted a statement but was not able to attend a hearing. Senator Charles E. Grassley (R-IA), who chairs the subcommittee, has criticized the Judiciary's requests for more judgeships and its resource management. Last year, the subcommittee began hearings examining the judgeship allocations in all the circuits. Representatives from every circuit except for the Ninth Circuit have now testified before the subcommittee.

Tenth Circuit

Seymour testified, "The U.S. Court of Appeals for the Tenth Circuit is pleased to report that it is able to keep its docket current because it has no vacant judgeships. Having our entire complement of judges for almost three years has enabled us to operate efficiently and expeditiously."

Seymour acknowledged that the Tenth Circuit stands in a "somewhat unique position," since all of its 12 authorized judgeships are filled and no additional ones are requested. The court's recent history, however, demonstrates the toll of vacancies. In 1984, the court received two additional judgeships, but because three judges took senior status, by 1987 only seven of 10 judgeships were filled. The 1990 Omnibus Judgeship bill increased the court's authorized judgeships to 12, but the court did not reach full strength until 1995. "From 1987 until its last judgeship was filled in 1995," said Seymour, "the court was forced to rely heavily upon help from its senior judges, as well as from visiting judges. In addition, the court looked for creative ways of handling its caseload, including judicial screening, mentoring of staff counsel work, and the implementation of a mediation program." Judicial screening is a process by which judges of the court determine which cases may be decided without oral argument. When a case is at issue, it is submitted to a judge for screening. Each judge is a member of a screening panel of three judges and may retain a case to decide with the concurrence of the remaining panel judges, or place the case on a conference calendar for submission on the briefs or for placement on an oral argument calendar.

Also, as a part of the effort to reduce backlog and keep judgeship costs down, the court implemented a settlement program in 1991. "Our circuit mediation office provides mediatic services in civil appeals in which a parties are represented by counsel explained Seymour. "Many of thes are substantial cases that, if not settled, would require oral argume and full written decisions by the court. . . .The program provides an alternative to continued litigation and costs the parties significantly less than briefing and arguing an appeal."

All of the Tenth Circuit's active and senior judges attend the circui week-long oral argument sessions, practice that Seymour believes con tributes to the court's collegiality. I addition, district court judges are invited to sit with the court during the oral argument terms. "This pra tice enables us to become acquainte with the new judges and assists the in becoming familiar with our judg and practices," said Seymour.

Four district courts within the Tenth Circuit have vacant judge-

From right: Senator Charles E. Grassley (R-IA) greets Chief Judge Richard A. Posner (7th Cir.) before the subcommittee hearing.

ief Judge Stephanie K. Seymour (10th Cir.)

ips. Each court is requesting that existing vacancy be filled.

venth Circuit

The Seventh Circuit has 11 dgeships and no vacancies at this ne. With the services of six senior dges, the number, according to sner, has been adequate to enable e court to handle its entire seload. Posner, however, cau- ned members of the subcommit- , "[I]f the caseload surges, or if lges die, retire, become inactive, come disabled, etc., we may find it possible to do our work without ng visiting judges, expanding the egation of judicial functions to the ff, curtailing oral argument, owing the backlog to grow, or ing other measures that might luce the quality of our work." Posner was congratulated on the nagement of the court by subcom- ttee members and attributed the ciency of the circuit to various ovative practices. Of the 3,350 es in the year ending September 1997, "slightly more than half appear in one way or another ore being ready for submission to a panel of judges for decision on the merits," said Posner. "Some of the appeals are abandoned, some consolidated, some dismissed on motion, and some settled with (and sometimes without) the assistance of our two settlement officers." The court hears about two-thirds of the remaining cases because oral arguments are granted in virtually all cases in which both parties are represented by counsel, unless the parties waive argument. Opinions are published in roughly half the cases decided on the merits. In 1988, the median time from oral argument to decision was 4.4 months. The time now is 2.7 months. The improvement in the speed with which the court decides cases has occurred in the last five years.

Posner was asked by the subcommittee's ranking minority member, Richard J. Durbin (D-IL), why in the Chicago area only 30 to 50 lawyers want to be considered for federal judgeships. The reasons, according to Posner, are that most lawyers would take a substantial cut in pay to become federal judges, that the nomination process can be humiliating and time-consuming, and that some lawyers who handle predominantly civil cases think judges handle mostly criminal cases.

Sixth Circuit

The Sixth Circuit was authorized to have 16 active judgeships by the Judgeship Bill of 1990. "But today," Martin said in his statement to the subcommittee, "more than seven years since the passage of the most recent judgeship bill, we have never achieved that goal." The circuit's single vacancy has existed for more than three years, and, although a nominee for the vacancy is pending, no action has been taken by the Senate Judiciary Committee.

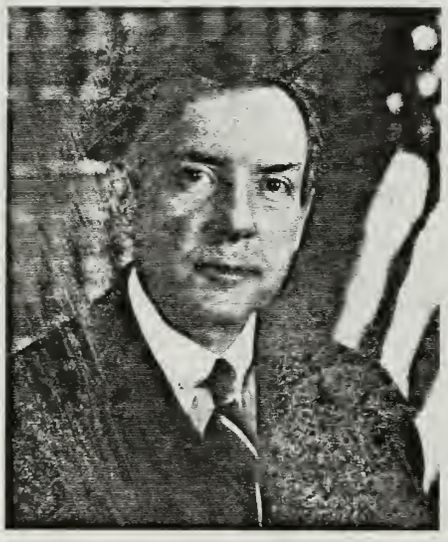
In the fiscal year ending September 30, 1997, the circuit attempted to dispose of approximately 2,000 cases on the merits after hearing or submission by scheduling a total of 48 hearing/submission panels, with each panel to be assigned 40 cases. "In order to staff the 48 hearing and submission panels," Martin stated, "we would need the equivalent of 18 active judges sitting full time. Because we have only 15 active judges serving, the deficit has to be made up from the work performed by our senior circuit judges, by assignment of visiting judges from other circuits, or the assignment of district judges from without our circuit to sit on the court of appeals." Even with the hard work of its active and senior judges, and despite a variety of practices designed to enhance the circuit's efficiency and improve the administration of justice, Martin said the court is falling behind.

Chief Judge Boyce F. Martin Jr. (6th Cir.) submitted a statement to the subcommittee on the allocation of judgeships within his circuit, but was unable to attend a hearing.

Judicial Improvement Act of 1998 Introduced in Senate

Calling his bill "a long overdue effort to minimize the potential for judicial activism in the federal court system," Senator Orrin G. Hatch (R-UT) last month introduced S. 2163, the Judicial Improvement Act of 1998, with co-sponsors Senators John Ashcroft (R-MO), Spencer Abraham (R-MI), Strom Thurmond (R-SC), Jeff Sessions (R-AL), and Jon Kyl (R-AZ).

The bill includes many of the provisions contained in the House's recently passed Judicial Reform Act of 1998, and some from H.R. 2294, the Federal Courts Improvement Act of 1998. Like an early version of the House Judicial Reform Act, S. 2163



Senator Orrin G. Hatch (R-UT) introduced the Judicial Improvement Act of 1998 last month.

contains the repeal of Section 140 of P.L. 97-92, which currently requires specific congressional action for judicial salaries to increase, unlike the automatic cost-of-living adjustments for Congress. The Senate bill now goes to the Judiciary Committee, which Hatch chairs, for consideration.

According to Hatch, S. 2163 is not an assault on the federal Judiciary. "Judges, however, are simply not entitled to deviate from their roles as interpreters of the law to create new law from the bench," Hatch said. "If they believe otherwise, they are derelict in their duties and should resign to run for public office—at least then they would be accountable for their actions. It is time we pass legislation that precludes any federal judge from blurring the lines separating the legislative and judicial functions."

Hatch said the bill "modestly proposes to respond to the problem of judicial activism" by, among other things

- Requiring a three-judge district court panel to hear appeals and grant interlocutory or permanent injunctions based on claims that a state law enacted by referendum or a federal law is unconstitutional. The Judicial Conference opposed a narrower provision in the House Judicial Reform Act that related only to state laws.
- Requiring federal courts to periodically review existing consent decrees or civil actions in which prospective relief is issued (not just those involving prison litigation). In addition, a provision could limit the use of special masters and could broaden the Judiciary's responsibility for the payment of special masters in prison cases appointed prior to enactment of the Prison Litigation Reform Act of 1996.
- Depriving a federal court of the authority to order state or local governments to increase taxes as part of a judicial remedy. A related provision, dropped from the House Judicial Reform Act, was opposed by the Judicial Conference.
- Preventing a federal court in the consideration of habeas corpus petitions from prohibiting state or local officials from reprosecuting a defendant—referring to a contr versial decision in the Eastern D trict of Pennsylvania in which t district judge ordered the petitioner released from state priso and prohibited reprosecution o the grounds that the petitioner was actually innocent of the charge of murder and that the prosecution was infected with misbehavior.
- Preventing a federal court from ordering the release of prisone on grounds that their condition of imprisonment violate their co stitutional rights. This provision similar to an amendment added by Representative Tom DeLay (TX) to the House Judicial Refor Act. The Senate bill contains the same prohibition of prisoner release orders, but unlike the Hou bill it does not terminate all exis ing consent decrees.

S. 2163 also includes a provision that any Act of Congress shall be prospective in application only unless a provision included in the act expressly specifies otherwise. According to bill co-sponsor Thurmond, "This simple rule will eliminate a great deal of uncertaint As a result, it will reduce litigation costs and help our judicial system better focus to reserve its limited resources." The Judicial Conferenc previously has supported, in gener similar legislation proposed by Thurmond.

Another provision is intended to curb prisoners' frivolous and malicious motions by requiring the complainant prisoner to pay for the costs of filings. Yet another provisio limits collateral relief, saying no post-conviction remedy may challenge the custody or sentence of a person on the ground that the custody or sentence is the result of voluntary confession.

CALENDAR DATES FOR THE THIRD BRANCH

Vol. 30 Number 7 July 1998

AUGUST

10-11 **Monday-Tuesday**
Executive Committee

17-18 **Monday-Tuesday**
Committee on Financial Disclosure

17-19 **Monday-Wednesday**
Video Orientation for Newly Appointed Magistrate Judges

17-19 **Monday-Wednesday**
National Workshop for Bankruptcy Judges II

SEPTEMBER

14-18 **Monday-Friday**
Video Orientation for Newly Appointed District Judges

15-16 **Tuesday-Wednesday**
Judicial Conference of the United States

23-25 **Wednesday-Friday**
National Workshop for Magistrate Judges II

BANKRUPTCY JUDGESHIP, District of New Jersey at Trenton

Applications are being accepted for the position of bankruptcy judge in the District of New Jersey, sitting in Trenton. Bankruptcy judges are appointed to 14-year terms. Salary: $125,764. Applicants must be members in good standing of the highest court of at least one state, the District of Columbia, or the Commonwealth of Puerto Rico, and members in good standing of every other bar of which they are members. Applicants should have engaged in the active practice of law for at least five years; demonstrate outstanding legal ability and competence, and a commitment to equal justice under the law; and indicate by their demeanor, character and personality that they would exhibit judicial temperament if appointed. An extensive background in bankruptcy practice is not required. For an application contact: Circuit Executive Office, Third Judicial Circuit, 22409 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1721, phone: (215) 597-0718. Applications (submit an original plus 12 copies, including writing samples with each copy) should be received by the Circuit Executive Office at the above address, marked Attention: Bankruptcy Judge Search Committee, by the close of business **Friday, August 28, 1998**.

BANKRUPTCY JUDGESHIP, Southern District of Ohio at Dayton

Bankruptcy judge position available: Appointment for 14-year term. Salary $125,764. Full public notice with qualification standards is posted in the offices of the Clerks of the U.S. Court of Appeals for the Sixth Circuit and U.S. District and Bankruptcy Courts of the Southern District of Ohio. For further information and application forms, contact the Office of the Sixth Circuit Executive, U.S Court of Appeals for the Sixth Circuit, 503 Potter Stewart United States Courthouse, Cincinnati, Ohio 45202-3988, phone (513) 564-7200. **Application deadline: September 1, 1998.**

CHIEF PROBATION AND PRETRIAL SERVICES OFFICER, Eastern District of Kentucky at Lexington

Applications are being accepted for the position of chief probation and pretrial services officer in the Eastern District of Kentucky (Lexington). Salary: JSP 14-17, $64,998 to $116,700. Send letter of application and resume to Leslie G. Whitmer, Clerk, U.S. District Court, P.O. Box 3074, Lexington, KY 40588-3074. **Application deadline: August 1, 1998.**

ASSISTANT CIRCUIT EXECUTIVE FOR AUTOMATION, Fifth Circuit

Applications are being accepted for the position of assistant circuit executive for automation in the Fifth Circuit. Duties include overseeing the automated systems supporting the functions of the circuit judges' chambers, courts of the Fifth Circuit, and court support units. Must possess a minimum of six years managerial experience, which provided an opportunity to acquire and demonstrate advanced knowledge of automation theories, principles, design, and practices. Experience in managing a highly technical staff and strong interpersonal and communications skills are required. A bachelor's degree and skill in administering PC-based and UNIX systems, data communications networks, database management systems, and other interactive systems are required. Salary: $61,149 to $99,416 (CL-31). Send cover letter, complete resume, and salary history to Mr. Gregory A. Nussel, Circuit Executive, U.S. Courts, Fifth Judicial Circuit, 600 Camp Street, Room 300, New Orleans, LA 70130. **Application deadline: August 14, 1998.**

SENIOR STAFF ATTORNEY, Eighth Circuit

Applications are being accepted for the position of senior staff attorney for the Eighth Circuit. The senior staff attorney supervises a staff of 18 attorneys and five support staff, and is charged with developing and submitting to the court legal memoranda and draft dispositions relating to a wide variety of federal appeals and related legal matters. Salary: $89,916 to $116,888. Applicants must be admitted to practice before the highest court of a state or territory of the U.S., and have highly developed skills in legal research, analysis and writing. Good communication and interpersonal skills, with an ability to assume and delegate responsibility required. A minimum of 10 years of progressively responsible experience in the practice of law or other legal or court environment, plus managerial experience, desired. A letter of application, with a resume, an unedited writing sample, a copy of the law school transcript, and an indication of class rank should be sent, with three references, to Millie B. Adams, Circuit Executive, U.S. Court of Appeals for the Eighth Circuit, 1114 Market Street, Suite 611, St. Louis, MO, 63101-2042. **Application deadline: August 24, 1998.**

EQUAL OPPORTUNITY EMPLOYERS

Pay Raise Future Uncertain as Clock Ticks on 105th Congress

Recent House Action May Jeopardize Judges' COLA in 1999

The Senate Appropriations ommittee recently took positive ction on a 1999 cost-of-living djustment (COLA) for stices and judges in the ommerce, Justice, State, and diciary appropriations bill. enator Judd Gregg (R-NH) cluded the necessary ction 140 of P.L. 92-97 aiver language that permits Employment Cost Index djustment in 1999 in the bill proved by the Senate ppropriations Committee. though Senator Robert Byrd (D-V), ranking minority member of e Appropriations Committee, jected to the COLA and com-ented on the judges' retirement stem, Gregg kept the promise he de at the subcommittee hearing. egg also initiated the COLA last ar, and has been a champion for Judiciary on this issue.

On the other hand, the House Appropriations Committee just took an action that seriously jeopardizes the outcome of a COLA for judges in 1999. The Committee approved the House Treasury, Postal Service, and General Government bill, which includes language that would deny a COLA for judges, members of Congress, and executive schedule officers. Chairman Jim Kolbe (R-AZ) and ranking minority member Steny Hoyer (D-MD) said that they personally supported a COLA, but election year pressures had caused the House leadership to conclude that it was not feasible.

> *"It is the sense of the Judicial Conference that the problem of fixing the compensation of judges, Members of Congress, and high federal executives will continue to frustrate us until the Congress and the President agree to restructure the process for fixing the salaries of these officials."*

The House Commerce, Justice, State, the Judiciary, and Related Agencies appropriations bill is silent on the COLA issue and the Senate Treasury, Postal Service bill is scheduled for mark-up in mid-July. If the Senate provision on the judges' COLA survives floor action, it will become a conference issue with the House. At both stages, the COLA is at great risk.

The Administrative Office is continuing its strong support of the issue on the hill. Last month, Administrative Office Director Leonidas Ralph Mecham wrote to members of Congress saying, "I strongly believe that the denial of a 1999 cost-of-living salary adjustment would be a big step down the steep slope of real pay. As many Members of Congress have personally observed, the repeated denial of such adjustments to those who govern our country may imperil the pluralism and integrity of all three branches of government." Mecham also told members that, "If we want the best people in government, we must pay them satisfactory wages. It is the sense of the Judicial Conference that the problem of fixing the compensation of judges, Members of Congress, and high federal executives will continue to frustrate us until the Congress and the President agree to restructure the process for fixing the salaries of these officials."

Congress last approved a COLA for members of Congress, executive schedule employees and federal judges in January 1998, the first in five years. At that time, Speaker of the House Newt Gingrich reportedly said that annual COLAs should be the rule, as provided for under the Ethics Reform Act of 1989. However, the question of a COLA for FY99 is still in question and will likely remain unresolved until Congress finishes its work on its appropriations bills.

Pilot Project Makes Internet Comment on Rules Possible

Members of the bench, bar, and ublic will soon have the option of lectronically submitting their omments on proposed amend-ents to the federal rules and rms via the Internet.

As part of a pilot project, the dicial Conference Committee on ules of Practice and Procedure nnounced that the electronic ption of submitting comments via e Internet will become effective n or around August 1, 1998. ritten comments still will be cepted. All comments on civil les and evidence, whether electronic or written, must be submitted no later than February 1, 1999. All comments on the bankruptcy rules, due to the volume of proposed rules, must be submitted no later than January 1, 1999.

The text of the rule amendments will be available on the Judiciary's website at **www.uscourts.gov**. Information also will be available on the dates of public hearings and details of the submission of comments, including instructions on how to send comments electronically on the proposed rule amendments.

JUDICIAL MILESTONES

Appointed: Judge Richard D. Cudahy (7th Cir.) to the division of the U.S. Court of Appeals for the District of Columbia, for the purpose of appointing independent counsel, succeeding Judge John D. Butzner, Jr. (4th Cir.) October 26, 1998.

Reappointed: Judge Peter T. Fay (11th Cir.) to the division of the U.S. Court of Appeals for the District of Columbia, for the purpose of appointing independent counsel, October 26, 1998.

Reappointed: Judge David B. Sentelle (D.C. Cir.) to the division of the U.S. Court of Appeals for the District of Columbia, for the purpose of appointing independent counsel, October 26, 1998.

Appointed: M. Margaret McKeown, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, May 28.

Appointed: Delissa A. Ridgway, as U.S. Court of International Trade Judge, U.S. Court of International Trade, May 29.

Appointed: Judith M. Barzilay, as U.S. Court of International Trade Judge, U.S. Court of International Trade, June 3.

Appointed: William P. Dimitrouleas, as U.S. District Judge, U.S. District Court for the Southern District of Florida, June 1.

Appointed: Edward F. Shea, as U.S. District Judge, U.S. District Court for the Eastern District of Washington, May 28.

Appointed: Arthur J. Tarnow, as U.S. District Judge, U.S. District Court for the Eastern District of Michigan, May 26.

Appointed: C. Christopher Hagy, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Georgia, June 1.

Appointed: Ricardo S. Martinez, as U.S. Magistrate Judge, U.S. District Court for the Western District of Washington, June 8.

Appointed: Pamela Ann Mathy, as U.S. Magistrate Judge, U.S. District Court for the Western District of Texas, June 8.

Elevated: Judge Rosemary S. Pooler, to U.S. Court of Appeals Judge, U.S. Court of Appeals for the Second Circuit, June 9.

Elevated: Bankruptcy Judge Sara E. De Jesus, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the District of Puerto Rico, January 1.

Senior Status: Judge William Wayne Justice, U.S. District Court for the Eastern District of Texas, June 30.

Retired: Senior Judge David S. Doty, U.S. District Court for the District of Minnesota, June 30.

Retired: Senior Judge Robert R. Merhige, Jr., U.S. District Court for the Eastern District of Virginia, June 8.

Retired: Magistrate Judge Philip K. Sweigert, U.S. District Court for the Western District of Washington, June 7.

Deceased: Senior Judge Hugh Gibson, U.S District Court for the Southern District of Texas, June 18, 1998.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of July 1, 1998

Courts of Appeals
- Vacancies
- Nominees

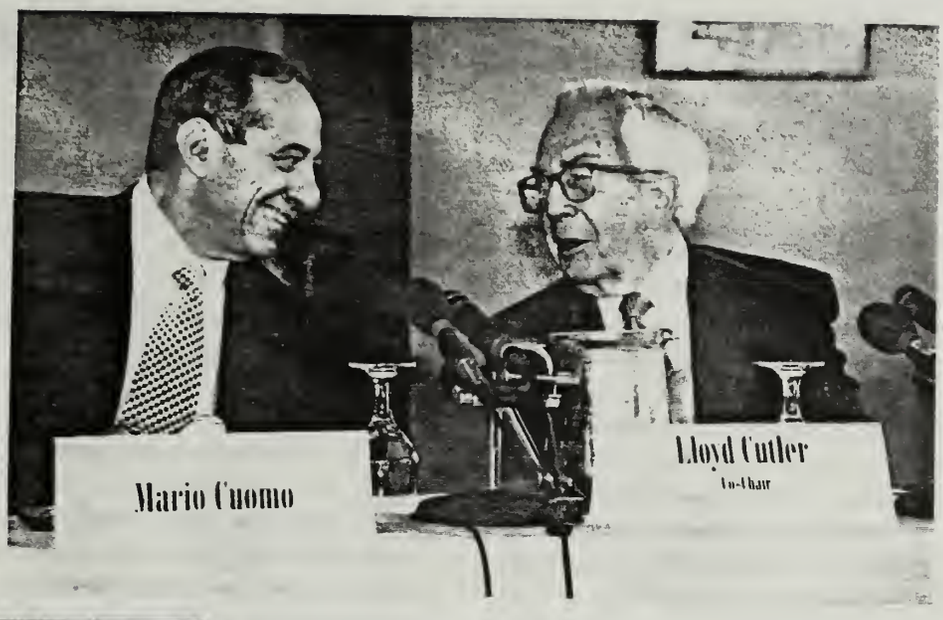
District Courts
- Vacancies
- Nominees

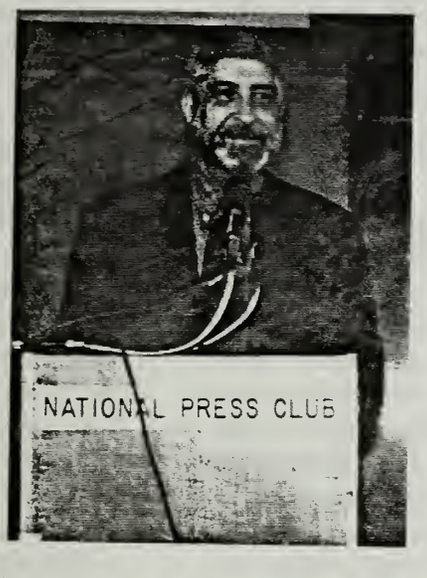
Court of International Trade
- Vacancies
- Nominees

Courts with "Judicial Emergencies"

For more information on vacancies i the Federal Judiciary visit our websi at www.uscourts.gov.

Citizens for Independent Courts Project to Defend Judiciary





Former Oklahoma Representative Mickey Edwards (photo left) with former New York Governor Mario Cuomo and former White House Counsel Lloyd Cutler (photo above) at the press conference announcing the formation of the Citizens for Independent Courts. Former Senator Alan Simpson participated by phone from Wyoming.

While asserting that "an independent Judiciary is not one shielded from criticism," the newly formed Citizens for Independent Courts project nonetheless contends that courts are able to protect the basic rights of individuals and decide cases fairly only when they are free to make decisions according to the law, without regard to political or public pressure."

A press conference announcing the formation of Citizens for Independent Courts was held last month in Washington. The bipartisan group is an initiative of The Century Foundation/Twentieth Century Fund, and is supported by funding from the Soros Open Society Institute.

According to its mission statement, the project grew out of concern that politically motivated attacks on the courts do a "grave disservice to the principle of an independent Judiciary and threaten the ability of judges to decide cases fairly and impartially." Four officials who announced the creation of the group at the recent press conference were former New York Governor Mario Cuomo, former Wyoming Senator Alan Simpson, former Oklahoma Representative Mickey Edwards, and former White House Counsel Lloyd Cutler. Edwards and Cutler are co-chairs of the project.

Simpson, joining the conference by phone from Wyoming, stressed the importance of protecting an independent Judiciary from political posturing by filling judicial vacancies. "Undue delays in the confirmation of federal judges," Simpson stated, "inhibit our ability to maintain an independent Judiciary."

Cuomo also defended the courts. In a prepared statement, he said, "The courts are America's most vital institution for protecting the rights of individuals. When the courts are under attack, it means individual rights are in jeopardy. We must protect our courts to protect our rights." However, Cuomo said, "On both the state and federal levels, we are seeing this integrity eroded by a constant assault of misleading political rhetoric."

Many familiar names are among the project's 80 members including former U.S. Senator Howell Heflin; former U.S. Representative Robert W. Kastenmeier; former director of the FBI and former federal judge William S. Sessions; ABA president Jerome Shestack; former Senators Mark Hatfield and Paul Simon; Carter administration attorney general Griffin B. Bell; Reagan administration White House Counsel Fred Fielding; and former Clinton administration White House Counsel and federal judge Abner Mikva.

The project plans to undertake in-depth studies and make recommendations on

- What distinguishes legitimate criticism from intimidation of judges.
- How to preserve the integrity of the processes for judicial selection in the state and federal systems.
- What unique problems are presented in the state judiciary, including elections and financial contributions to judicial campaigns.
- What the appropriate legislative role is in setting the jurisdiction and power of the courts while preserving constitutional rights.

Courthouses, Rents, COLAs and Y2K:

An Interview with Representative James Kolbe

Representative James Kolbe (R-AZ) is chair of the House Appropriations Subcommittee on Treasury, Postal Service and General Government. The subcommittee's jurisdiction includes the General Services Administration (GSA), the Office of Management and Budget (OMB), and the Office of Personnel Management (OPM).

Q: Many judges believe that GSA charges exorbitantly high rents, high overhead, and management costs to the courts for use of government-owned courthouses. Has your subcommittee addressed this issue?

A: I don't think that GSA charges high rents. GSA has to charge competitive rates. They are required to do so by law, and they usually charge what is the commercial equivalent. There is an appeals process that the courts, or any tenant, can go through if they think the rate they are being charged by GSA is too high. In fact, there was a study done by GSA's inspector general that said GSA was actually subsidizing tenants for overhead costs. In other words, the Federal Buildings Fund and GSA appropriations were paying for all the overhead.

Clearly, one of the problems we have with GSA is that historically they have not been charging enough for the rents. That's why the Federal Buildings Fund is not bringing in enough money either to build courthouses on a fast enough basis, or for the maintenance or renovation of projects.

In the long run, the courts will benefit from paying the fair market rate because they'll have better maintenance, earlier renovations and upgrades, and new courthouses.

Q: Your subcommittee appears to be concerned about the steps taken to date by federal agencies to upgrade their automated systems to make them Year 2000 (Y2K) compliant. What are your concerns and what do you believe needs to be done?

A: We have been very, very concerned with Y2K compliance issues. OMB has the overall responsibility within the federal government for managing this properly, and OMB comes under my subcommittee's jurisdiction. I note with both interest and alarm that the most recent OMB report card on agencies shows many of the agencies are getting a lower grade on their Y2K compliance than before, suggesting that they are not doing as well. This is a very serious matter because they are supposed to have a full year of testing to make sure everything is operable. If agencies do not have this completed by the end of 1998, which is just six months away, they are going to be in serious trouble.

It's a failure of management more than anything else. The agencies and agency managers have not been on top of this issue, and they haven't given it the kind of attention that is needed.

Q: The Administration has failed to request funds for construction of badly needed courthouse projects for the last two fiscal years. Considering the enlightene action on the part of your subcom mittee to go ahead and fund 14 of these projects in fiscal year 1999, d you believe the Administration ha seen the error of its ways and will resume such funding requests in fiscal year 2000?

A: I don't know that they will. There's a good chan they won't, because as is often the case in the budget, they know that Congress has pressure on them to build these courthouses. The Adm istration will take this into accoun establishing its budget priorities. Then when Congress funds the absolutely vital and necessary thir like courthouses, which you need maintain a whole system of justice that works correctly, and doesn't fund all the Administration's new programs, they'll say Congress doesn't care about education or about veterans. It's an easy game f them to play, and it is my guess th probably will continue to do that. hope that's not the case.

We agreed last year that the building moratorium was necessar because the Federal Buildings Fun had dropped so precipitously. We needed a year of breathing room t build the fund back up. But you ca continue a moratoriu very long. you go too long wit doing something about th astructure literally takes a gener tion or two catch up. So you can't impose that kind of moratorium too long. You can never fall too far behind. It's ju

matter of making sure that you ve the money and allocating the sources.

Q. Are you satisfied with the steps taken by the diciary and GSA to address issues raised in previous ars by your subcommittee ch as prioritizing courthouse nstruction projects, reducing urthouse construction costs, d identifying the optimum nber of courtrooms needed in v projects?

A. Congress asked the Judicial Conference to mit a five-year priority plan on rthouse construction and we ly stuck to it. I think that the oritizing is done with sound, sible, criteria. I had somebody e up to me on the House floor say that it's impossible that a rthouse isn't higher up in that I said I'd take a look, but I'm not g to second guess the criteria. erwise, it becomes so politicized mpossible.

es, I am satisfied with the kinds ings being done to reduce truction costs. We've insisted GSA and the Judiciary look at ifications and standardize some e elements of a courthouse. e is still a great tendency on the of judges to want to have umental edifices. I don't think thouses should look like ware- es. There is an important symbolism to the architecture and construction of a courthouse. They are supposed to be impressive. But I think there are a lot things we could do to reduce costs such as standardizing specifications, or using standardized designs of courtrooms, instead of designing each one to be a little bit different than the one next door, and so forth.

"I think we have an obligation to make sure that we get those increases, and I feel very strongly about that. I wish we could somehow depoliticize pay raises for members."

The same thing applies in terms of identifying the optimum number of courtrooms. I'm not completely satisfied. You look at universities, and if a university has a 60 percent rate of usage it means that many of their classrooms are empty most of the time. The GAO report said that courtrooms are used for trial or non-trial purposes only 54 percent of the days that they could've been used. Trying to get more usage out of the courtrooms and sharing courtrooms is important.

Q. In an era of constrained federal budgets, some question the ability of Congress to provide sufficient appropriations to continue the multi-year effort to furnish the additional court facilities required by the courts. Has your subcommittee considered any alternative ways of funding these projects, such as public-private partnerships or lease-to-own initiatives?

A. The Budget Act of 1990 is the critical thing, and in retrospect, probably a terrible mistake. It has significantly narrowed the options that we have available to us by changing the whole process by which you score construction funding. It used to be that if you did a financing or a lease-to-own, you could amortize it over a period of time. But the Budget Act of 1990 required scoring every dollar up front. If we were to authorize construction of a building costing $700 million dollars, the entire amount gets scored in the first year. We really need to look at different ways of budget scoring. You can't do lease-to-own, because the entire cost of that is counted in the first year that you authorize it, so you have to pay for it out of your budget in one year.

Q. Some believe that the concept of GSA's Federal Buildings Fund, where receipts come into the fund through agency rental payments and the cost of operating federal buildings, paying for leased buildings, and, ideally, providing for the construction of new facilities are paid for out of the fund, has outlived its usefulness. Do you believe the Federal Buildings Fund is working properly and that it should continue to exist? Are you considering any alternative approaches?

A. I think GSA's Federal Buildings Fund works, and works pretty well, overall. It is the right way to go because it allows GSA to collect the rents, build up the fund,

*See **Interview** on page 12*

Interview continued from page 11

and use the rents for further repairs, renovations, and new buildings. You are allowing for the construction of a new building when an old one has to be replaced. It essentially works as a capital budget.

Q: Your subcommittee recently agreed to an amendment denying a 1999 cost-of-living allowance (COLA) for members of Congress, judges, and executive schedule employees. Could you tell us what this amendment means in terms of pay raises for the coming fiscal year?

A: I obviously strongly support regular, systematic pay increases for all senior people in government, regardless of branch. It's one of the reasons I worked so hard last year to get a cost-of-living adjustment through for the first time in five years. I freely concede that Mr. Hoyer and I offered the amendment not to give members a COLA this year. Neither of us is in favor of it, but we offered it in order to keep the issue out of a floor battle. The leadership told us we can't protect a pay raise this year, so get it over with as fast as you can, as early as you can.

I don't think that you can make any judgment on what it means for coming years. I think we have an obligation to make sure that we get those increases, and I feel very strongly about that. I wish we could somehow depoliticize pay raises for members. The whole idea of tying members' pay raises together with judges, and the top level SES people in the executive branch makes some sense, however. The pay of the top levels in all three branches of government should rise together.

Q: The 1989 Ethics Reform A called for the creation of a Citizens' Commission on Public Se vice and Compensation. The commission was designed to be an ind pendent group that could speak w authority on pay increases for mem bers of Congress, judges and senio executives. However, the commis sion has never functioned. What a your views on such a commission?

A: The law says the pay raise is supposed to be automat but a few years ago somebody sai well, there's a way around that, I can offer an amendment that will block the pay increase from going into effect. There's no way, as it turns out, to make a pay raise absolutely automatic. Congress ca always block an earlier action or vote to say no to any commission's findings. You just can't avoid the politicization of this process.

THE THIRD BRANCH

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THE THIRD BRANCH

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rthouse Funding Delay Jeopardizes Judicial System

Judges Urge Congress to Approve Needed Funding During Testimony Before House Subcommittee

Judge Ann C. Williams (N.D. Ill.) and Judge Norman H. Stahl (1st Cir.) outline the impact further delay could cause.

behalf of the Judiciary, a l judge has urged Congress to ve 14 courthouse construction ts under consideration by a e subcommittee, which already been delayed by a year. Failure so could negatively impact , witnesses, litigants, lawyers, ose who work in federal ouses.

me of the projects are necessary se current leases will be expir- site acquisition within the next l months makes good business sense," said Judge Norman H. Stahl (1st Cir.). "Others face severe overcrowding caused by explosive caseload growth and/or major security risks."

Stahl, chair of the Judicial Conference Committee on Security and Facilities, testified last month before the House Transportation and Infra-

*See **Funding** on page 3*

DE

Courthouse Funding Survives House Floor Action ..... pg. 3
Need for New Federal Statute Questioned ..... pg. 4
How Analysis Helps Gauge Threats ..... pg. 6

Appropriations Bills Clear Both Houses

By mid-July the Senate passed the appropriations bill for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for fiscal year 1999. The House waited until the first week of August to pass its appropriations bill, which, among other measures, limits Census Bureau funds. President Clinton has already said he would veto a bill with such a limit. A conference of the bills will wait until both Houses return from the August recess in September.

In the Senate

The Senate adopted the recommendations of its full Appropriations Committee, giving the Judiciary $3.93 billion in total obligations, a 4.4 percent increase over FY98 obligations. The bill retains the provision authorizing a salary adjustment during FY99 for U.S. judges and justices, and appropriating funds for that purpose. However, this provision is expected to be deleted in conference. The Senate also added several amendments that would affect the Judiciary. These amendments would

*See **Bills** on page 2*

Bills continued from page 1

- ❒ Require the Judicial Conference to report on whether the Federal Rules of Criminal Procedure should be amended to provide for the presence of witness' counsel in the grand jury room.
- ❒ Limit monthly payments to panel attorneys in federal capital prosecutions, and possibly some other cases, to the monthly compensation of the U.S. attorney in that district.
- ❒ Preclude courts from requiring a civil litigant to pay for special master costs for prison condition cases unless the special master was appointed before the enactment of the Prison Litigation Reform Act.
- ❒ Require that reports submitted to the Appropriations Committee on matters within the jurisdiction of the Judiciary Committee also be submitted to the Judiciary Committee.
- ❒ Move Schuylkill County from the Eastern District to the Middle District of Pennsylvania.

The Senate report also calls for a courtroom utilization study, a reduction in judges' staff and a 20 percent reduction in judges' travel, a pilot project on courtroom technology, and a study of the costs and benefits of reviving post-conviction defender organizations.

In the House

H.R. 4276, the Commerce, Justice, State and Related Agencies appropriations bill for FY99, gives the Judiciary $3.99 billion in total obligations, a 6.3 percent increase over FY98.

Chairman Harold Rogers (R-KY) introduced H.R. 4276, saying,"[I]f this bill sets one priority, it is to provide increased funding to fight crime and empower federal, state and local law enforcement with the resources they need to enforce our laws and prevent crime." Much of the subsequent debate on the bill, however, concerned funding for the Census Bureau. In the end, the House passed a bill with limited Census Bureau funds. Floor action also attached the Citizens Protection Act of 1998 to the bill, a provision that sets ethical standards for federal prosecutors and independent counsels, sets penalties for misconduct, and establishes a Misconduct Review Board. The President is threatening to veto the bill over either of these provisions. An amendment by Ranking Minority Member Alan Mollohan (D-WV) cuts $20 million from the Judiciary's Salaries and Expenses account, in addition to cuts to several other agencies, in order to provide additional funds to the Legal Services Corporation.

In anticipation of the September conference of the bills, the Judiciary will send a letter later in August to the appropriations conferees to appeal the funding and some of the language in the bill and report. Judges and AO staff will seek to obtain funds at least at the higher House level and to delete several report language items.

FY 1999 Commerce, Justice, State, and the Judiciary Appropriations Bills

(Total obligations* in thousands of dollars)

	FY 98 Obligations	House Passed	Senate Passed
Supreme Court			
Salaries and Expenses	$29,278	$31,095	31,059
Buildings and Grounds	3,739	5,571	5,571
U.S. Court of Appeals for the Federal Circuit	15,617	16,143	15,673
U.S. Court of International Trade	11,789	11,947	11,626
Courts of Appeals, District Courts, and Other Judicial Services			
Salaries and Expenses	2,980,903	3,164,650	3,124,508
Defender Services	360,206	391,831	360,952
Fees of Jurors	66,873	69,944	70,239
Court Security	167,891	174,569	176,873
Administrative Office of the U.S. Courts	89,084	93,651	93,833
Federal Judicial Center	18,496	18,600	18,216
Judicial Retirement Funds	37,200	37,300	37,300
U.S. Sentencing Commission	9,766	9,600	9,374
TOTAL OBLIGATIONS**	**$3,759,787**	**$3,995,372**	**$3,925,731**

* Total obligations include funding from appropriations, fee collections, fee and appropriated fund carryover, Judiciary Automation Fund, transfers, and reimbursements

** Totals are adjusted so that programs financed through reimbursement from other Judiciary appropriations are not counted twice.

ding continued from page 1

cture Subcommittee on Public
dings and Economic Develop-
t. He was accompanied by Judge
C. Williams (N.D. Ill.), who is
former chair of the Conference
mmittee on Court Administration
Case Management. She dis-
ed the Conference consideration
olicy relating to courtroom
zation and sharing. The commis-
er of General Services Admin-
tion's Public Buildings Service,
ert A. Peck, also testified at the
ing.
his testimony, Stahl provided
ubcommittee with a status
rt on Conference initiatives to
greater economy and efficiency
urthouse construction.

States Courts Design Guide

Working closely with Congress,
Conference has made significant
ges to the Judiciary's space
dards that should result in cost
gs for new projects. The most
t revision focused on reducing
irculation space needed to move
office to office, which could
as much as $2 million in the
ge future project.

ear plan

he Conference continues to
w and update its prioritization
ojects using a standard weighted
ng method. GSA input and
sis are important parts of this
ss.

oom utilization and sharing

is issue is much more complex
simply counting the time the
are on in a courtroom. In her
estimony, Williams told the
ommittee, "The certainty of an
able courtroom in order to
e a firm trial date is what
urages settlement of cases.
y-five percent of our cases
. Without that settlement rate,
we would be buried with cases
waiting for trial."

Nevertheless, at its March 1997 session, the Judicial Conference adopted a policy that attempts to balance a judge's essential need to have an available courtroom with the economic reality of limited resources. The Conference policy provides one courtroom for each active district judge but sets forth a non-exclusive list of factors for circuit councils to consider with regard to the courtroom needs for senior and visiting judges. The Conference also has approved planning assumptions that can be used to determine the proper number of courtrooms in a new facility. These assumptions address several factors that can affect the number of courtrooms needed in the short and long terms. Some of these factors include the average age of district judges upon appointment, the average number of years it takes for a replacement judge to begin work, and the number of years a senior judge would require a courtroom dedicated specifically to his or her use.

During the hearing, subcommittee members differed over the need for a study of courtroom use. Ranking minority member Representative James A. Traficant Jr. (D-OH) suggested that there should not be a statutory requirement for utilization studies. "We don't want to be in your way. We don't want to micromanage," he said. However, Rep. John J. Duncan Jr. (R-TN) complained that for years the subcommittee has been a "rubber stamp," and said there's "a lot of lip service being paid to costs." Williams responded that the Judicial Conference had asked the RAND Corporation to study the literature available on courtroom sharing and to advise on the feasibility of conducting a study. RAND found that such a study would cost millions of dollars and take several years, and that when all of that was done, RAND could not guarantee that it could or would arrive at a formula for the number of courtrooms needed that could be applied on a national basis.

*See **Funding** on page 4*

Courthouse Funding Survives House Floor Action

During the House's consideration of the fiscal year 1999 Treasury and General Government Appropriations Act, floor action directed at unauthorized projects stripped out the notations in the bill specifying how much each courthouse project should receive, but inadvertently left intact the total funding amount of $527 million for courts and other public buildings and GSA's authority to spend the funding.

The House Subcommittee on Public Buildings and Economic Development later approved authorizing resolutions for eight of the courthouse projects, and requested reports on four more courthouse projects, with the intention of authorizing them in September.

The Senate postponed a vote on the FY99 Treasury and General Government Appropriations Act until after the August recess. The delay was caused by a proposed amendment unrelated to courthouses that would have bogged down in debate for some time.

Courthouse funding for 14 courthouse projects is included in the Senate appropriations bill, and it is hoped it will survive a conference of the House and Senate appropriations bills.

Need for New Federal Statute Questioned

Hate crimes legislation is the latest congressional initiative that appears to expand the criminal jurisdiction of federal courts into areas previously prosecuted exclusively by state courts, a representative of the federal Judiciary told a Senate committee last month.

"This trend to federalize state offenses places the viability of judicial federalism . . . unquestionably at risk," said Judge Richard J. Arcara (W.D. N.Y), a member of the Judicial Conference Committee on Criminal Law. "S.1529 (the Hate Crimes Prevention Act of 1998) appears to be emblematic of that trend," Arcara testified last month before the Senate Judiciary Committee. The House is considering a similar bill, H.R. 3081. Both bills would provide federal prosecution for a significant number of crimes traditionally prosecuted in state systems. While a Judicial Conference representative did not testify at House hearings on H.R. 3081, Judicial Conference concerns, identical to those expressed over S. 1529, were transmitted by letter to Representative Henry Hyde (R-IL), chair of the House Judiciary Committee.

> ***"This trend to federalize state offenses places the viability of judicial federalism . . . unquestionably at risk."***

S. 1529 was introduced by Senator Edward Kennedy (D-MA), with co-sponsors Senators Arlen Specter (R-PA) and Ron Wyden (D-OR). The bill has attracted 20 additional co-sponsors in the Senate. At a press conference before the hearing, Kennedy called hate crimes a form of terrorism, and said that while states will continue to take the lead in the prosecution of hate crimes, "the full power of federal law should also be available to investigate, prosecute, and punish these crimes."

Funding continued from page 3

"Courtrooms are not fungible. Courthouses are not factories," Williams explained. "What you need in Manhattan is different from what you need in New Mexico. In Manhattan you may be able to walk down the hall to use another judge's courtroom. In New Mexico you may have to go across the state to use an available courtroom." Williams added that courtroom sharing is complicated by an expanding federal jurisdiction and a judicial docket that is unpredictable—judges do not determine the number of cases heard, criminal cases must be tried within a set time, and civil cases typically require several months of preparation and cannot be scheduled on short notice. "Sharing courtrooms substantially complicates this already difficult task," Williams said.

Peck referred in his testimony to the strong partnership GSA has built with both the Administrative Office and federal judges in the largest courthouse construction program since the 1930s. "Judges and the clerks of the courts are among our most demanding and discerning clients," Peck said, "and we enjoy the give and take with them. We are committed to allowing our tenant agencies to participate whenever possible in the development of our projects, and we are working with the Judiciary to make them more familiar with our processes."

According to Peck, GSA is not only commissioning the best American architects to build landmark federal courthouses in a program of design excellence, but GSA also has established a successful cost benchmarking process to bring those new courthouses in on budget. Peck told the subcommittee that the overall size of a building is the most significant determinant of its cost. And while GSA has not found that collegial floors—grouping judges' chambers together on designated floors with courtrooms grouped on other floors—generate cost savings, courtroom sharing and other strategies might reduce building volumes and square footage and, therefore, costs.

Security also is of critical importance, and GSA is conducting risk analyses during design and construction of new courthouses to identify appropriate security measures. GSA estimates that security concerns have added between 5 and 10 percent to the costs of the buildings now in design.

Senior Judges' Courtrooms

All judicial councils have developed courtroom availability policies for visiting judges and for senior judges who do not have caseloads requiring substantial use of a courtroom. The policy is applied when determinations are being made regarding the construction of courtrooms. Other assessed factors include

- The workload to be handled by each judge.
- The number of years a judge is likely to be at the facility.
- An evaluation of the current complement of courtrooms, including the special proceedings courtroom and any other special purpose courtrooms.
- An evaluation of the need for a courtroom specifically dedicated to use by visiting judges.

Hatch, in his opening remarks at Senate hearing, said that the bill es not cover any criminal conduct already covered under state law, that it does create *federal* crimes t did not exist before. In addition Arcara, witnesses at the hearing luded the U.S. Deputy Attorney neral Eric Holder and the daughof James Byrd, the Africanerican man recently dragged to death allegedly by three white n in Jasper, Texas.

Arcara told the committee that the "presents a difficult but crucial e for Congress to consider. That e is not whether we are 'for' or inst' the prosecution of hate nes. All decent, right thinking ple abhor hate crimes. The real e before you is whether the acts iolence covered by the proposed ute, which already are criminal nses under state law, and which ady may be federal crimes as , are not adequately prosecuted punished at the present time."

he scope of S. 1529 is extremely d. The bill would provide for ral prosecution of a significant ber of crimes that are traditionprosecuted in the state systems. example, it would make a federal e of any act resulting in the ly injury of someone, or the mpt thereof, when it is motivated ne actual or perceived race, color, gion, or national origin of any on. The bill also authorizes opriations to increase the ber of personnel to prevent and ond to these crimes, which is an essive use of federal resources to rce the proposed law.

While the Judicial Conference aken no official position on this said Arcara, "we believe S. appears to be but the latest posal in a trend that seeks—isely in our view—to expand the inal jurisdiction of the federal ts into matters previously ecuted exclusively in the state ts."

In a congressional hearing that was the focus of much media attention, Judge Richard J. Arcara (top of photo), chair of the Conference Criminal Law Subcommittee on Legislation, testified on federal prosecution of hate crimes with a panel of witnesses who included federal prosecutors, victims of hate crimes, and legal experts.

During the past decade and a half, a steady stream of congressional enactments have expanded the jurisdiction of federal courts over larger and larger areas of criminal activities traditionally reserved to prosecution in the state courts. The Judicial Conference has regularly expressed concern over this trend and has consistently urged that the prosecution of most crime should remain the responsibility of the states. This would allow the federal criminal justice system to devote its limited resources to prosecuting those offenses that it is uniquely suited to investigate and prosecute.

Holder testified at the Senate hearing that the Clinton Administration "urges the prompt enactment of S. 1529." Holder predicted only a modest increase in federal hate crimes prosecutions brought by the federal government if the bill were enacted. Concurrent federal jurisdiction in hate crimes is necessary, Holder told the committee, "only to permit joint state-federal investigations and to authorize federal prosecution in those instances in which state and local officials are either unable or unwilling to pursue cases that adequately address the federal interest in fighting bias crime."

Judging Threats

How Analysis Helps U.S. Marshals Service Gauge Harm to Judicial Officials

Over the last 20 years, through three assassinations of federal judges, security experts have been trying to develop the expertise to forecast when a threat to a judge or other members of the judicial family may become life-threatening. This expertise is especially critical when it is not feasible to assign protective details for all of the judges who receive threats each year. Last year alone judges and other judicial officials received 650 threats or inappropriate communications.

In an attempt to better assess the danger, U.S. Marshals Service (USMS) researchers studied the more than 3,000 threats received since 1980 and their outcomes. What they and other researchers learned challenged the accepted wisdom that a direct threat represents the clearest danger. Research showed that it is not always the person who threatens who poses the greatest danger.

Frederick (Ted) Calhoun, head of USMS Operational Research and Development, has been involved in the development of a program to evaluate inappropriate communications that takes this conclusion into consideration. "Typically, the person who really wants to kill someone won't announce it," said Calhoun. If this is unnerving, Calhoun hastens to add that the situation is not hopeless. "There are identifiable behaviors," he said, "and under the leadership of Director Eduardo Gonzalez the Marshals Service has shifted our focus to look at those."

The process begins with an analysis of the inappropriate communications. Although judges and other members of the judicial family know to relay a direct threat from an individual to the U.S. Marshals Service, deputies also would like to hear about inappropriate communications. These are communications that may not be explicit threats, but may cause concern. For example, a threat may be as direct as, "You'll get yours," but inappropriate communications can encompass stalking, pseudo-legal court filings, obsessive admiration, or even references to bodyguards, security, or safety. Although roughly 14 percent of all threats are from habitual threateners, each of whom may send 40 to 50 threats a year, no threat should be taken lightly. Anyone receiving threatening or inappropriate communications should report them immediately to the Marshals Service. Each federal district has a threat investigator to handle these communications. These investigators can look at a wide range of areas during their investigations, including conducting record checks and interviewing the persons making the threats or inappropriate communications, family members, or co-workers.

The first priority of the Marshals Service is to make certain the judge or staff member is safe. The official may be interviewed to determine if anything unusual has occurred at home, at work, or while traveling. "Many inappropriate communications are from people who may be very angry over the outcome of a court case," Calhoun said, "and the protectee may even know the individual and be able to provide information to help the threat investigator assess the seriousness of the situation."

Once safety is assured, the threat or inappropriate communication is sent to the Marshal Service's Analytical Support Unit, where research analysts enter what is known about the communication and the threatener into a nationwide statistical database. Thousands of threats or communications reported since the 1980s are in the database, along with their outcomes. Each entry has been catalogued by upwards of 30 identifying variables, including date of the communication, how it was delivered, if the

Climbing Bankruptcy Filings

Bankruptcy filings in federal courts rose 8.5 percent in the 12-month period ending June 30, 1998. The accompanying table shows how total filings and filings by chapter have fared over the last five years.

Bankruptcy Filings by Chapter of the Bankruptcy Code
Years Ending June 30, 1994, through 1998

		Chapter				
Year	Total	7	11	12	13	Other
1994	845,257	578,903	17,098	976	248,246	34
1995	858,104	581,390	13,221	904	262,551	38
1996	1,042,110	712,129	12,859	1,063	316,024	35
1997	1,316,999	917,274	11,159	1,006	387,521	39
1998	1,429,451	1,015,453	9,613	845	403,501	39

CALENDAR DATES FOR THE THIRD BRANCH

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SEPTEMBER

14-18 **Monday-Friday**
Video Orientation for Newly Appointed District Judges

15-16 **Tuesday-Wednesday**
Judicial Conference of the United States

23-25 **Wednesday-Friday**
National Workshop for Magistrate Judges II

OCTOBER

5-7 **Monday-Wednesday**
Workshop for Judges of the 7th and 8th Circuits

5-9 **Monday-Friday**
Orientation for Newly Appointed Magistrate Judges

8-9 **Thursday-Friday**
Advisory Committee on Bankruptcy Rules

15-16 **Thursday-Friday**
Advisory Committee on Appellate Rules

18-20 **Sunday-Tuesday**
Third Circuit Conference

19-20 **Monday-Tuesday**
Advisory Committee on Criminal Rules

19-21 **Monday-Wednesday**
Workshop for Judges of the First Circuit

22-23 **Monday-Wednesday**
Advisory Committee on Evidence Rules

THE THIRD BRANCH

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COUNSEL, Supreme Court of the United States, Legal Office
The Legal Office of the Supreme Court seeks an attorney with excellent analytical, research, and writing skills and demonstrated ability to perform high quality legal work with minimum supervision and within specified time limits. Applicants should have a minimum of five years of broad practice experience, preferably including federal and constitutional law and some exposure to employment law, ethics, and government contracts law. Experience with appellate courts particularly helpful. Supervisory and managerial experience preferred. The position does not entail working with the Justices on the Court's opinions. Salary: comparable to GS-15. Send a brief writing sample and any one of the following: resume and cover letter, standard federal government Form 171, or optional Form 612 to: Supreme Court of the United States, 1 First Street NE, Personnel Office, Room 3, Washington, DC 20543, 202-479-3404. **Application deadline: close of business September 16, 1998.**

CLERK OF COURT, U.S. Court of Federal Claims
The U.S. Court of Federal Claims seeks applications from highly qualified candidates for the position of Clerk of Court. The Court of Federal Claims is a national court headquartered in Washington, D.C. Applicants must have a minimum of 10 years of progressively responsible administrative experience in either the public or private sector, at least five years of which must have included experience in management, particularly in the areas of court or law firm administration, automated data processing, personnel, and budgeting. Salary: $104,790 to $118,748. Interested applicants should send an original and three copies of a letter of application, together with a detailed resume (naming three references) to Honorable John P. Wiese, Judge, U.S. Court of Federal Claims, 717 Madison Pl. NW, Washington, D.C. 20005. **Application deadline: October 15, 1998.**

BANKRUPTCY JUDGE, Western District of Missouri
The U.S. Court of Appeals for the Eighth Circuit seeks applications from all highly qualified candidates for a 14-year appointment as U.S. bankruptcy judge for the Western District of Missouri. The position is headquartered at Kansas City, Missouri, with travel required to outlying divisions in Joplin, Springfield, Jefferson City, and St. Joseph, Missouri. The vacancy will occur on January 8, 1999. A Merit Selection Panel will review all applications and recommend persons considered to be best qualified. Salary: $125,764. Application forms may be obtained from the clerk of the U.S. District Court, 811 Grand Avenue, Kansas City, MO 64106 (816-426-2811, Ext. 244), and from the Circuit Executive's Office in St. Louis, MO (314-539-6219). Applications should be submitted to Ms. Millie B. Adams, Circuit Executive, 1114 Market Street, Suite 611, St. Louis, MO 63101-2042. **Application deadline: September 1, 1998.**

LAWYER, House of Representatives, Office of Legislative Counsel
Law clerks who are interested in a career applying their interpretative and writing skills to cutting edge issues before the Congress, may wish to consider employment as a lawyer in the U.S. House of Representatives Office of Legislative Counsel. The Office provides drafting services to the committees and members of the House at every stage of the legislative process. Starting salary: $47,000. Those interested in applying or obtaining further details should write to Douglass Bellis, Deputy Legislative Counsel, 136 Cannon House Office Building, Washington, D.C. 20515.

BANKRUPTCY JUDGE, Middle District of Alabama at Montgomery
Applications are being accepted for the position of bankruptcy judge in the Middle District of Alabama. Appointment: 14-year term. The position will be available **October 18, 1999**. Salary: $125,764. Application forms and the full announcement may be obtained from any district court or bankruptcy court clerk of the Eleventh Circuit or from the circuit Executive in Atlanta. Further information is available through Norman E. Zoller, Circuit Executive, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street NW, Atlanta, Georgia, 30303. Telephone: (404) 335-6535. **Application deadline: received at the Circuit Executive's Office in Atlanta not later than October 14, 1998**.

BANKRUPTCY JUDGE, Middle District of Alabama at Montgomery
Applications are being accepted for the position of bankruptcy judge in the Middle District of Alabama. Appointment: 14-year term. The position will be available **April 14, 1999**. Salary: $125,764. Application forms and the full announcement may be obtained from any district court or bankruptcy court clerk of the Eleventh Circuit or from the circuit executive in Atlanta. Further information is available through Norman E. Zoller, Circuit Executive, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street NW, Atlanta, Georgia, 30303. Telephone: (404) 335-6535. **Application deadline: received at the Circuit Executive's Office in Atlanta not later than October 14, 1998**.

EQUAL OPPORTUNITY EMPLOYERS

ıtener was identified, the
ve, etc. Any new threat or
ɔropriate communication and
ıriables will be compared to the
in the database where the
ɔmes were known. Although the
rity of cases in the database
nothing happened after the
l communication, 3.9 percent
iolent outcomes. A violent
ɔme may be assigned, for
ple, if a judge is threatened but
ness in the case is harmed.
ıother step in the analysis is the
AIC 3 (M-3) computer-based
n. The original MOSAIC was
oped by Gavin de Becker, an
rity on celebrity protection.
ɔmized to fit the particular
of the Judiciary, M-3 assesses
creens inappropriate communi-
s and threats through a series of questions about the behavior and background of the subject. Each answer is assigned a weight based on the importance the response has in predicting danger. Some of the questions look at the presence of "inhibitors" in a threatener's life: the things, such as home, family, and job, that may be lost if they follow through on a threat. "It's important to consider," said Debra Jenkins, chief of the Analytical Support Unit, "that some of these inhibitors may be jeopardized through court cases."

Based on interviews with the protectee, the database results, M-3, and the district's investigative results, the Marshals Service develops the most appropriate protective response for that particular case. According to Dennis Chapas, chief of the Administrative Office Court Security Office, who first used MOSAIC in assessing threats and inappropriate communications at the Supreme Court, the threat investigation and assessment program has allowed the Marshals Service to expedite the assessment part of the investigation, which may shorten the time protective 24-hour details are assigned to judges and minimize disruption of their normal schedules. "The Marshals Service's initiative in this area has been very proactive," said Chapas. "They are one of the few federal law-enforcement agencies to establish a threat investigation and assessment program and use a state-of-the-art computer-based program, like MOSAIC, as a tool in evaluating threats and inappropriate communications."

iciary Benefits Improvement Package Stalls in Congress

hough Administrative Office
or Leonidas Ralph Mecham
O staff continue to explore all
le options to move legislation
ear authorizing improvements
benefits of judges and Judi-
employees, hopes are fading
approval. The benefits pack-
ced opposition from the Office
sonnel Management, and it has
trongly opposed by the
nistration.
nid-July, Mecham wrote to
about a long-awaited
e benefits plan for judicial
s and employees. The autho-
language for the plan was
ed to be included by Rep-
ative John L. Mica (R-FL),
an of the House Government
n and Oversight Subcom-
on the Civil Service, in the
ervice Integrity, Performance,
ɔmpensation Improvement

The proposed legislation would have established a 5-year demonstration project with a two-year extension, and allow judges and Judiciary employees to choose among various levels of supplemental benefits coverage. This proposal would not have affected the core federal benefits currently available to Judiciary employees, but would have allowed employees to redirect salary to pay for benefits on a pre-tax basis. Presently, federal agencies, such as the Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, the Federal Reserve and the Farm Credit Administration, offer some form of pre-tax flexible benefits to their employees.

Unfortunately, several provisions of the Civil Service Integrity, Performance, and Compensation Improvement Act drew the opposition of OPM and federal employees unions, and the bill never made it out of subcommittee. The Judiciary's benefits plan also was opposed by OPM.

AO staff then attempted to attach the Judiciary's benefits plan to H.R. 4250, the Patient Protection Act of 1998. This was rejected because House leadership wanted to limit amendments to the bill. An alternative would have been to introduce the plan as a free-standing bill but this was doomed when Representative Elijah E. Cummings (D-MD), ranking minority member on the House Civil Service Subcommittee, opposed the plan's provisions on behalf of OPM.

Although the Administration generally opposes demonstration projects such as the one the Judiciary is proposing, AO staff will continue to work with supporters such as Representative Mica to identify an appropriate legislative vehicle.

JUDICIAL MILESTONES

Appointed: Kermit Victor Lipez, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the First Circuit, July 1.

Appointed: Chester J. Straub, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Second Circuit, July 15.

Appointed: George Caram Steeh, III, as U.S. District Judge, U.S. District Court for the Eastern District of Michigan, July 2.

Appointed: A. Howard Matz, as U.S. District Judge, U.S. District Court for the Central District of California, July 10.

Appointed: Stephan P. Mickle, as U.S. District Judge, U.S. District Court for the Northern District of Florida, June 22.

Appointed: Thomas M. Weaver, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Oklahoma, June 30.

Appointed: S. Caroline Malone, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Texas, May 26.

Appointed: Nan R. Nolan, as U.S. Magistrate Judge, U.S. District Court for the Northern District of Illinois, July 6.

Elevated: Judge Susan Webber Wright, to Chief Judge, U.S. District Court for the Eastern District of Arkansas, succeeding Judge Stephen M. Reasoner, July 23.

Senior Status: Judge Rudi M. Brewster, U.S. District Court for the Southern District of California, July 1.

Senior Status: Judge Lenore Carrero Nesbitt, U.S. District Court for the Southern District of Florida, July 19.

Senior Status: Judge Paul E. Plunkett, U.S. District Court for the Northern District of Illinois, July 10.

Senior Status: Judge L.T. Senter, U.S. District Court for the Northern District of Mississippi, July 30.

Retired: Judge John G. Davies, U.S. District Court for the Central District of California, July 18.

Resigned: Magistrate Judge John W. Fisher, II, U.S. District Court for the Northern District of West Virginia, June 30.

Deceased: Judge Frank X. Altimari, U.S. Court of Appeals for the Second Circuit, July 20, 1998.

Deceased: Judge Daniel Scanlon, Jr., U.S. District Court for the Northern District of New York, July 17.

Deceased: Senior Judge Philip C. Wilkins, U.S. District Court for the Eastern District of California, July 8.

Deceased: Judge Joseph P. Willson, U.S. District Court for the Western District of Pennsylvania, August 3, 1998.

The July Milestones inaccurately reported that Senior Judge David S. Doty (D. Minn.) retired. We are happy to report he is a very active senior judge (as of June 30, 1998) and has not retired. Our apologies for the error.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of August 1, 1998

Courts of Appeals	
Vacancies	1
Nominees	1
District Courts	
Vacancies	5
Nominees	2
Court of International Trade	
Vacancies	
Nominees	
Courts with "Judicial Emergencies"	3

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

ourtroom Technology Draws Positive Response

t is becoming increasingly clear courtroom technologies can litate trial management, reduce time and associated costs, and rove fact-finding, jury under- ding, and access to court pro- lings. But how is courtroom nology, particularly evidence entation and videoconferencing ems, perceived by judges, neys, and jurors?

t its June 1998 meeting, the cial Conference Committee on mation and Technology re- ed the results of an assessment lect technologies used in trooms. Although the universe ata was relatively small and h of it was generated by those are enthusiastic about technolo- the response about the utility necessity of these technologies urtroom proceedings was quite ive. Here are some of the lights on two such technologies:

Evidence Presentation

deo evidence presentation nologies display evidence ronically and simultaneously to yone in the courtroom through itors placed at the judge's bench, box, witness stand, and counsel s. Most judges who participated e assessment indicated that o evidence presentation tech-

83% of judges said video idence presentation helped em manage the proceeding hile more than 90% of jurors dicated that they were able to e evidence clearly and follow e presentations.

gies improve their abilities to ge proceedings, reach deci- question witnesses and understand testimony and evidence. For example, of those judges responding, 87 percent thought that video evidence presentation technologies helped them to understand the witness better, 81 percent thought it helped them understand testimony better, 72 percent thought it improved their abilities to question witnesses, and 83 percent found the technologies helped them to manage the proceeding. These improvements seem to be due primarily to their being able to view exhibits and contested materials at the same time as everyone else.

More than 90 percent of the jurors who responded indicated that they were able to see evidence clearly and follow the attorneys' presentations. A similar percentage believed that the technologies made it easier for attorneys to present some evidence. As a result, most jurors believed that they were able to remain more focused on testimony and evidence, although a substantial minority would have preferred to handle the evidence in some instances.

Videoconferencing

Videoconferencing can be used to provide live two-way audio and video transmission between a court and a remote site. It offers opportunities to conduct some court proceedings without the necessity of having all participants present in a single courtroom. It appears to be most useful in routine pretrial matters or in circumstances where it represents an obvious benefit to both counsel and the court. Judges and attorneys said they liked videoconferencing because it can save time and travel costs. Judges also noted that by reducing the need to move prisoner participants for proceedings, it enhanced security.

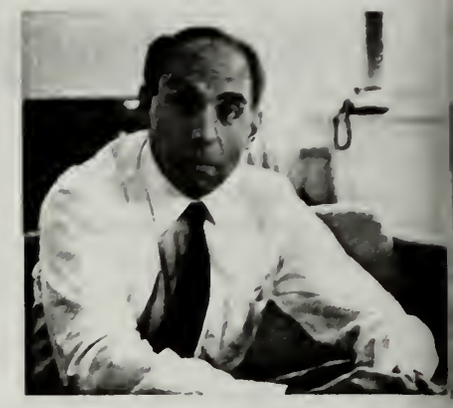
Judges and attorneys did not find videoconferencing had a big impact on several aspects of the proceedings in which it was used. For example, none of them found it had a great effect on their preparation time, the length of the proceedings, or their ability to examine or understand remote witnesses. The benefits cited almost universally by judges and attorneys was the savings in travel time and costs and improved flexibility in scheduling.

Next Steps

Based on these positive findings, the committee requested that the Administrative Office develop and propose a plan for the implementation of courtroom technologies over time. The committee will consider this plan at its next meeting. Of the technologies addressed in the study, video evidence presentation and videoconferencing require significant investment. The committee determined that core components for these technologies should be identified and funds appropriated to the Judiciary should be used to pay for them.

Recognizing the necessity of providing some limited funding for courtroom technologies before a long-term implementation plan is developed, in January 1998 the committee approved an interim funding policy to be used to evaluate, approve, and fund requests. Priority is given to requests from courts undergoing new construction or major renovation projects, as every such courtroom should be equipped with the appropriate infrastructure to support this technology. Next in priority are special requests from courts that have a demonstrated need for courtroom technologies because of special circumstances.

An Interview with Robert A. Peck, PBS Commissioner



Robert A. Peck was appointed Commissioner of the Public Buildings Service (PBS) of the U.S. General Services Administration in December 1995. As head of PBS, he is in charge of asset management and design, construction, leasing, operating, and disposals for a real estate portfolio of more than 300 million gross square feet. PBS owns or leases nearly all civilian federal office space, courthouses and border stations, and many laboratories and storage facilities.

Q: The Federal Buildings Fund experienced a shortfall last year. Can you tell us what happened and what long-term effects, if any, the shortfall has had? What is the current status of the fund?

A: The term "shortfall" is probably a self-inflicted wound because it describes something that didn't happen. We did not, as some people suspect, overspend our budget. We can't do that by law. Unlike most federal agencies that are handed a portion of the taxpayers' dollars to spend, PBS runs a lot like a real estate business. We generate our own revenues by charging rents to federal agencies, to the courts, and to everyone else for whom we provide space, as the law requires, although our budget is sometimes supplemented by general appropriations.

We generate over $5 billion a year in rent revenues. When real estate rents started to escalate in the mid-1990s, as a result of a good economy, the Office of Management and Budget and Congress decided not to allow us to increase our rents to market rate. At the same time, we had an administrator, who looking back at the market over the previous five years thought, and I think rightly, that we had probably charged too much rent in some cases. So in order to make up for that, he unilaterally dropped rents, just as market rents were increasing. To make a long story short, our revenues took a big dip for two years, below what we had projected to Congress we would generate and spend.

To cover that gap, OMB directed us to reduce spending in a single year to make up for the two-year revenue drop. If we had been in the private sector, we would have described it as an operating loss for two years, and in accounting terms we would have taken a charge against revenues.

This reduction concerned judges and a lot of us as well. You can't stop air conditioning buildings or paying guards, maintenance crews, and the like. We didn't sacrifice security or building operations, but we cut back on repairs and alterations and on new construction. At the time, the Administration said one reason it was not going to propose new starts on building projects in FY98 was to get over this revenue gap.

Q: Some judges believe that the rent charged for courthouses is too high. How are rents determined on federal courthouses?

A: Actually, in many cases the rents are probably too low, and that's a subject I have discussed with the members of the Judicial Conference Committee on Security and Facilities. We are required by law to charge a market rent. The location of a building has a lot to do with how the market prices its rent. In many cases, a mediocre building in a good location will charge a higher rent than a good building in a mediocre location. Many courthouses are in great locations.

The fundamental fact is this: courthouses are unique buildings. They are not comparable to ordinary office buildings in almost any sense. More space has to be devoted to circulation, for example, and to security needs. With that space, and the high courtroom spaces, construction costs are higher than in an office building of the same gross size. They also cost more to operate than office buildings. Those costs translate directly into the rent charged.

Because they are unique buildings, with no potential market other than the courts, private real estate professionals would calculate rents in a way that any student in Business 101 could calculate: amortize the cost of the building over 20 or 30 years and back it up into a rent that gives the government a return on the money it spent to build the courthouse. That's a way of setting the rent we are proposing to the Judiciary. It's very business-like and market-oriented. It is also a fact that, in a lot of cases, those rents will be higher than the office building across the street. But the court rents that we currently set by rule-of-thumb appraisals are also higher than the rents for nearby office buildings.

Q: You describe your process for charging a market-based rent for court facilities. Isn't that rate considerably higher than the cost to operate, maintain, and repair these

ernment-owned building? What pens to rental receipts you obtain a courthouse that are in excess of operating costs for that building?

• In 1972, the Federal Property
A • and Administrative Services was amended to require GSA to ge rents equivalent to those in commercial market. Those rents ne commercial market, obviously, r more than just costs of operat- and maintaining the buildings: include the costs of repaying s and a profit margin. In GSA, rent proceeds over and above ating costs are the only funds we reliably count on to be available major building repairs and vations and construction (costs ch in the private sector are ided through insurance or owing in the capital markets). stated before, we are not permit- o borrow to meet capital needs.

• Has GSA considered alterna-
• tives to current procedures unding federal courthouses, ding public-private partner- s or lease-to-own?

• Yes, we have discussed with
• OMB and Congress a ber of ideas that some have ed creative financing, but which ten to point out are creative only e federal government. It's the of financing the private sector state and local governments been doing for years, like sale leasebacks, lease purchases, and joint ventures with private developers. Another option would be for us to have access to the federal financing bank, which means we would borrow money inside the government and not always have to ask for appropriations for construction.

The problem that we run into with most of those ideas is that they seem to run afoul of various rules, most notably the scoring rules, through which the government accounts for capital expenditures.

I don't think that we or the Judiciary should give up pushing the envelope on this because, to me, the way we do accounting for government real estate is illogical. I think capital real estate expenditures should be treated differently from operating expenditures in the federal budget, just as they are treated differently in most state budgets. However, this is a debate that has been going on for a long time and involves complex issues concerning the role of the federal budget in the national economy, so I do not hold out much hope for a change any time soon.

Q. Many new federal court-
• houses are being recognized for design excellence. Why is courthouse design today so much better than courthouse design 15 to 20 years ago?

A. Beginning with Washington
• and Jefferson, we started building government buildings that were some of the best buildings in the country, and in fact continued to do so up until World War II. Interestingly, up until then most of the buildings were designed by architects who were civil servants. By the 1950s, the country was building a lot of fast, cheap stuff. There were a number of efforts in the 70s to change this. I worked for the National Endowment For the Arts in a little group that was trying to improve government architecture to little or no avail. In the early 1990s, with the help of Gerald Thacker of the Administrative Office, who was the acting commissioner of PBS for a critical six-month period, GSA's chief architect Ed Finer introduced a design excellence program. They called together a group of private sector contractors and architects, and asked what we were doing wrong and how could we make it better. With design excellence, I think we've found our way. We are hiring the best American talent there is and putting up great buildings.

Q. What has been done to im-
• prove security in federal courthouses since the bombing of the Alfred P. Murrah Building in Oklahoma City?

A. Security is a huge issue with
• us since the bombing of the Murrah Building—and as we're talking three days after a gunman entered the U.S. Capitol and killed two officers. Clearly public buildings and public officials, like judges, attract a lot of direct focussed threats. On the other hand we also are committed to the idea the public should have access to public buildings.

Since Oklahoma City, we estimate we're spending an additional 5 to 10 percent on each courthouse project to build in security.

There is room for some creativity on security and we've been pushed

*See **Interview** on page 12*

Interview continued from page 11

towards this, often by the judges, who believe, sometimes more than our security consultants, that the public has a right to be in the courthouses and to see what's going on. For example, in one courthouse in Minneapolis the judges worked very hard to make sure that the security was pulled to the back of the lobby so that the public could walk into the building. In Tacoma, Washington, we renovated an old train station and turned it into a courthouse, and the lobby is now an art gallery with exhibits in it. At the judges' insistence, a sign at the security point says, "Please enter, and please feel free to come through our security check point and visit your courthouse." So there are ways in which we can still invite the public in.

Finally, we are trying to be a little more sophisticated about security outside the courthouses. For example, in one of our new courthouses, the security devices around the building are going to be the subject of our art and architecture project. We've told the artist this needs to be an object that withstands a certain kind of force, but you decide what you will build. There are lots of things we can put around the courthouses that won't be obtrusive. For example, a tree of a certain circumference or a reinforced bench can stop a vehicle.

Q: The Judiciary has experienced some difficulties with OMB over the federal courthouse building program. Do you see any remedies that would improve our working relationship?

A: Everyone is concerned about costs, as they should be. We are, after all, talking about spending another $5 billion on courthouses, and a total of somewhere around $8 billion when all is said and done. But as I say to members of Congress and to reporters who sometimes worry about the quality of carpeting on the floor, if you really want to talk about saving dollars on a construction project, you have to talk about the size of the building. The basic cost of the building is set the day you decide how much space you have to enclose because that determines 90-95 percent of the actual cost of that building.

In a courthouse with 40 judges, if we have to provide 40 courtrooms with all the attendant spaces, that's obviously going to cost us more money than if we had to provide 30. There are two obvious issues here that make this more complicated than simply saying we are going to share courtrooms: Once you're below one courtroom for each active judge, no one quite knows what the right number of available courtrooms should be, and a large part of managing the caseload is the judge's ability to say there is a courtroom available because people then settle cases.

My concern about some proposed courtroom utilization is that, at least on first impression, they don't seem to contemplate how complicated this could be. Now, I have to say, on the other hand, you can always make things so complicated that you can never find a solution. If I had a message for the Judiciary it would be let's all work together to do a courtroom utilization study that we think makes sense, and do it sooner rather than later, because this issue continues to dog us.

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udiciary Appeals Appropriations Levels

Letters appealing the Judiciary's al year 1999 funding levels greeted use and Senate appropriations conferees on their return from ir August recess. The letter to conferees on HR. 4276, the mmerce, Justice, State and Judi- y bill, from Judicial Conference dget Committee chair Judge John yburn and Administrative Office ector Leonidas Ralph Mecham told ferees that with the Judiciary's wing workload, the level of propriations in both the House and ate bills are insufficient to sustain rent levels of services. Conferees l begin consideration of the House and Senate appropriations bills sometime in September with the goal of passing all appropriations bills before the planned adjournment of the 105th Congress in October. When current estimates of fees and carryover are included, the Senate bill gives the Judiciary $4.01 billion in total obligations, and the House gives the Judiciary $4.08 billion. The Judiciary's revised request is for an obligational level of $4.15 billion for FY99.

"We recognize that you have many competing demands for the limited funds and appreciate the increases that you have provided," the letter said. "However, we would be remiss if we failed to point out that the obligation levels provided for in both the House and Senate versions of H.R. 4276 are insufficient to fund the resources required by the courts to maintain the current levels of services considering their growing workload."

Caseload Growth

The Judiciary anticipates that even at the higher funding level provided by the House appropriations bill, Judiciary funding will fall short of what is needed. "[B]ased on *existing* caseload for fiscal year 1998 as well as anticipated carryover into fiscal year 1999," Heyburn and Mecham warned, "the obligation level provided by the Senate bill is $138 million below what is needed to perform the Judiciary's constitutional and statutory responsibilities. Even at the higher House level, fiscal year 1999 funding will fall $69 million short of current estimates of total Judiciary requirements."

The Judiciary's caseload is experiencing a dramatic growth, particularly in the criminal area. Criminal filings grew by 5.2 percent in FY97 and are expected to grow by another 13 percent in FY98. The growth is the result of increased cases brought by the Department of Justice, which is likely to receive significant increases from Congress for its investigative and litigative functions. Growth in the number of border patrol agents, FBI, DEA and INS agents, and U.S. attorneys increases the number of criminal investigations and prosecutions that ultimately end up in the

See Appeal on page 5

udiciary Loses a Friend

Justice Lewis F. Powell Jr. was buried in Richmond, Virginia last month at services attended by more than 900 people, including all current and retired Supreme Court members. ***See story on page 3.***

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Courts Quick to Discover Internet's Capabilities

Federal courts have been quick to discover just how well Internet access complements the public's need for information. From on-line rulings to forms on the web, courts are using the Internet to make access to records easier, filing more convenient, and some routine legal tasks more efficient. What is most impressive, however, may be the creativity individual courts are showing in their use of the Internet.

Federal court presence on the Internet is widespread. The Judiciary hosts its own website at www.uscourts.gov with general information on the structure of the federal Judiciary, statistics, rules, news releases, answers to frequently asked questions, and much more.

Many of the circuits post their opinions on the Internet, either on their own websites or in cooperation with a law school. In the 5th Circuit, new opinions are released twice a day. An opinions subscription list allows members of the public to automatically receive a WordPerfect copy of each published opinion via e-mail.

A look at the links on the federal Judiciary's homepage shows that 59 districts post such information as schedules, local rules, fee schedules, and job vacancies. Several courts offer electronic filing capabilities and many more, such as the Northern District of Mississippi, put filing forms on the Internet to save attorneys the legwork and time it takes to come down to the courthouse. An assessment project involving the district courts for the Northern District of Texas (www.txnd.uscourts.gov.) and the District of South Dakota (www.sdd.uscourts.gov), and the bankruptcy courts for the Northern District of Texas (www.txnb.uscourts.gov) and the Southern District of California (www.casb.uscourts.gov) is testing a public access network on the Internet through the Judiciary's gateways. These websites would provide the same information currently available on dial-up PACER (Public Access to Court Electronic Records) systems, which allow users with personal computers to dial into a district or bankruptcy court computer to retrieve electronic case information and court dockets. The Southern District of California also will provide imaged documents via the Internet.

And the list goes on. For example, two courts have shown an innovative flair in developing products for the Internet.

CourtWeb On-Line Rulings Information System

The District Court for the Southern District of New York (www.nysd.uscourts.gov) recently initiated the CourtWeb On-Line Rulings Information System. CourtWeb notifies attorneys or law firms within 15 minutes of the entry of any ruling or decision on any case the firm has registered for on the website. For example, a firm or practitioner would enter the case numbers for the cases they are following in the district court. When a ruling in that case or cases is posted to CourtWeb, an automatic e-mail message is sent directly to the attorney or firm's contact person. The message includes all the information contained in the ruling entry. More than 30 of the district's judges participate in the system with more than 164 law firms nationwide, including corporate law departments, federal, state and local governmental agencies registered to receive information. The system also can be searched by a judge's name or case number. A brief summary of the ruling is included in each entry, in addition to information such as the caption, case number, date, and judge's name. The system has been enhanced recently to allow attorneys to view the actual ruling or opinion document as well. The system software can be used by any court and more information on CourtWeb is posted at www.nysd.uscourts.gov. CourtWeb was begun at the direction of the district's technology committee and has been shepherded through to completion by the District Court Executive's Office. "One of the purposes of CourtWeb," said District Court Executive Clifford Kirsch, "was to cut down on the phone calls coming to chambers staff from attorneys checking on cases, and it has succeeded at being a time saver. For us, CourtWeb is making the best use of technology. It's designed for the legal community, but it's not restricted to them. Anybody who wants to look at the system can do it."

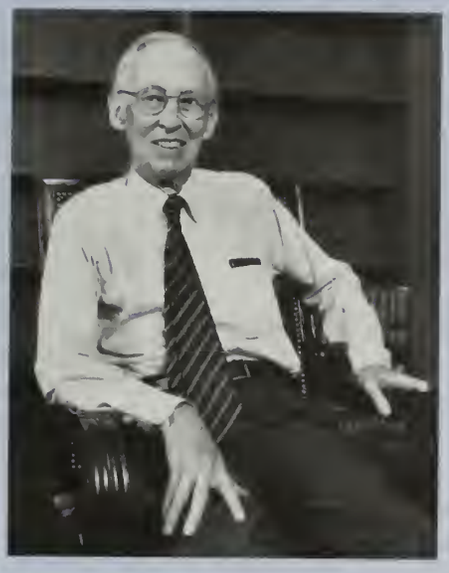
Defining an Electronic Filing Court Interface

Courts often develop local solutions to address particular needs when no national standard is available. For example, over the past few years the District Court for the District of New Mexico (www.nmcourt.fed.us) has developed the Advanced Court Engineering (ACE) system to allow the court to accept filings electronically via the Internet. In an effort to increase the volume of electronic filing, the court has recently undertaken a follow-on initiative to define a standard interface to the ACE system that will let third-party software suppliers develop law office software applications that could ease the electronic filing process. The intent is to make electronic filing another feature that could be integrated into existing law office software products by third-party vendors to complement law office systems that provide such functions as appointment calendars, case management, noticing, and billing. Rather than using the current interactive Web browser interface to ACE, attorneys will have the option to file electronically via more familiar law office software. Additionally,

The Lawyer's Skill Became the Judge's Excellence

Justice Lewis F. Powell Jr., died last month at age 90, following a legal career that included 15 years as an Associate Justice on the Supreme Court. Chief Justice William H. Rehnquist, who joined the court on the same day as Powell, delivered the eulogy at services in Richmond, Virginia. In a statement following Powell's death, Rehnquist said, "Justice Lewis F. Powell Jr. was the 99th Justice to serve on the Supreme Court of the United States. He and I took the Oath of Office on January 7, 1972, and from that day I prized my association and friendship with him throughout his 15 years of service on the Court and after his retirement in 1987. He was the very embodiment of 'judicial temperament'; receptive to the ideas of his colleagues, fair to the parties to the case, but ultimately relying on his own seasoned judgment. His years of diverse experience that he brought to the bench gave him a fund of common sense which is essential to the make-up of every great judge. He was also the epitome of a Virginia Gentleman in the very best sense of the phrase. I know that all of us who served with him will miss him."

A private practitioner in Richmond, Powell first received national attention as president of the American Bar Association in 1964. He turned down an appointment to the Court in 1969, but accepted President Nixon's second invitation a few years later. He was the first Virginian on the court since before the Civil War. Powell quickly developed a reputation as a consensus builder on the court. Associate Justice Anthony M. Kennedy said of Powell, "The American Judiciary has its lasting strength in its close ties to the attorneys who practice law. The life and career of Lewis Powell are emblematic of this close, necessary bond between the bench and bar. Lewis Powell came to the Court with no previous judicial experience, but with a towering reputation as a marvelous lawyer. He soon demonstrated to the Court and to the nation that the lawyer's skill soon becomes the judge's excellence."



Associate Supreme Court Justice Lewis F. Powell Jr. 1907-1998

Associate Justice Sandra Day O'Connor, who described Powell as one of the finest people she had ever known, said he "cared deeply about rendering justice in every matter in which he participated." Likewise, Associate Justice John Paul Stevens called him "a loyal and exceptionally wise man."

Associate Justice Antonin Scalia said Powell was "the sort of man who made those who practice law proud to be members of his profession. He was a skilled advisor and advocate, a careful and even-handed judge. . . ." During World War II, Powell had served in the Army Air Corps intelligence unit, and Associate Justice Stephen G. Breyer noted Powell's military career, along with his work at the bar and on the bench, was part of his service to the nation. "He put into practice our profession's highest ideals," Breyer said. "He was a superb judge and a marvelous human being." Retired Associate Justice Byron White called Powell "perhaps the epitome of a gentleman and a great lawyer. He was a fine Justice and a great friend of mine." Powell lived, said Associate Justice Ruth Bader Ginsburg, as the prophet Micah counseled, "doing justice, loving goodness, and walking modestly with his God."

lk filers, such as bankruptcy editors potentially could develop purchase software to enable utomatic" filing from their data-se applications directly to the urt's ACE database.

The new initiative, called Exten-le Markup Language Court terface (XCI), is an attempt to aracterize the electronic filing ocess of ACE in terms of a precise ecification, using a recently adopted Internet standard called Extensible Markup Language (XML), which is an enhanced form of the standard HTML web page description language. XML contains facilities for defining data structure and content, which can be used to define electronic filing transactions that can be processed automatically by the ACE software. The XCI specification is currently under development and will include capabilities to handle electronic filing (including attachments), docket entry generation, document security, message authentication, and filing confirmation. By explicitly defining the data entry interface to ACE, New Mexico hopes to encourage third-party vendors to enhance their existing law office software offerings (or develop new ones) to provide the electronic filing capability to a broader cross-section of the practicing bar.

Sentencing Commission May Lose Commissioners . . . and Ability to Act

If Congress adjourns this October without confirming or reappointing at least four commissioners to the U.S. Sentencing Commission, no amendments can be made to the U.S. sentencing guidelines, including action on any of the various congressional directives to the Commission contained in recently enacted legislation. That is because there would be seven vacancies on the seven-member Commission. Judge Richard P. Conaboy, the Commission's chair, has announced his resignation effective October 31, 1998.

A quorum of four commissioners is required to amend the guidelines, and three vacancies already exist among the seven voting members of the Commission. Three members, whose terms have expired, remain but they continue to serve until either a successor takes office or Congress adjourns. When the 105th Congress winds up sometime this fall, the terms of these commissioners will also expire—and Conaboy departs in November. The Commission has been without its full complement of commissioners since 1996.

By statute, the President appoints the voting members of the Commission with the advice and consent of the Senate. One member is appointed by the Senate as chair, and three members by the President as vice-chairs. At least three of the members shall be federal judges, and not more than four of the Commission members shall be members of the same political party. Of the three vice-chairs, not more than two shall be members of the same political party. On a number of occasions, the Judicial Conference has offered its recommendations to the President for the vacancies to be filled by federal judges.

And what happens if, come November, the Commission is without commissioners? "I'm an optimist at heart," said Conaboy.

It was 1994 when Wayne Anthony Budd, (photo left) Judge Deanell Reece Tacha (10th Cir.) (second from right) and Michael Goldsmith (photo right) posed with U.S. Sentencing Commission chair Judge Richard P. Conaboy at their swearing-in ceremony as commissioners on the U.S. Sentencing Commission—the last time commissioners were named. And unless Congress acts before it adjourns, the Commission soon will be without commissioners.

"The Commission will survive. We will be handicapped, and we may not be able to do the things Congress feels are important, but we will survive."

In the past, Congress has frequently requested the Commission to amend sentencing guidelines in light of new crime legislation, or it may request studies to gauge the impact of a change in criminal law. Following the 1994 crime bill, over 50 amendments were made to the U.S. sentencing guidelines. "Almost on an annual basis, Congress directs us to add an amendment," said Conaboy. "Last year we had a moderate load with approximately 26 amendments, and this year we've had 18. Typically, half of the amendments are congressionally related, but a fair number have been the resolution of circuit conflicts in interpretation of the guidelines."

What happens to these directives if there are no commissioners to vote? As an example, Conaboy cited a congressional directive enacted earlier this year to study telemarketing fraud and to increase penalties for the crime, if appropriate. "We can't comply if there aren't enough votes," said Conaboy.

The Commission's work extends well beyond amending the sentencing guidelines, and it is this work that Conaboy said will continue, with or without commissioners. "The good news is that we'll continue the Commission's research, legal analysis, and training of people in the field to understand and use

Commission Chair to Resign

As *The Third Branch* went to press, the U.S. Sentencing Commission announced that its chair, Judge Richard P. Conaboy, would resign effective October 31, 1998. Conaboy's decision allows the President to appoint a full slate of commissioners to the seven-member Commission.

"My leaving at this juncture ultimately is in the best interests of the Commission," Conaboy said in a statement. "Both sentencing policy and the operation of the Commission are better served if the incoming commissioners are accompanied by a new chairman. Otherwise, the very important work of the Commission is disrupted by my departure a year or so into the new commissioners' terms. . . .My only regret is that I won't be working as closely with so many people I have come to respect and

ne guidelines. That's the nucleus of
vhat we do." Currently, the Com-
nission is either preparing or has
ontracted for reports on pre- and
ost-guideline sentencing disparity,
naracteristics of persons receiving a
eparture, the operation of the
rganizational guidelines, and
arious topics for November's
neeting of the American Society of
riminology.

"Approximately 50,000 people
re sentenced in federal court every
ear," said Conaboy. "Add to that
ne number of victims of crime, and
ou have a picture of the number of
eople whose lives are impacted by
ne sentencing guidelines. It's an
normous responsibility for the
deral Judiciary, and the sentencing
rocedure needs to be working well.
nat's the importance of the Sentenc-
g Commission."

dge Richard P. Conaboy

lmire. I have no regrets about the
ork we have accomplished."
onaboy strongly urged that all
cancies be filled immediately, so
ere will be no interruption of the
ommission's work.

Conaboy was confirmed as chair
the U.S. Sentencing Commission
October 6, 1994. He also serves as
strict judge for the Middle District
Pennsylvania.

Appeal continued from page 1

courts. Without sufficient resources, the courts could become a bottleneck in the criminal justice system.

In addition to appeals for additional funding for the Court of Appeals for the Federal Circuit, the Court of International Trade, and the Federal Judicial Center, the Judiciary urged Senate and House conferees to change language in the appropriation bills' report in the following areas.

Senate Language

The report accompanying the Senate appropriation bill recommends what amounts to a 25 percent cut in chambers staff. While the rationale is that productivity improvements resulting from automation advances reduce the need for staff, in reality any productivity savings already have been offset by the large increase in the caseload per judge. The cuts recommended by the Senate would significantly reduce the ability of judges to dispose of cases in a prompt and fair manner.

The Senate report also recommends that judges' travel funds be reduced 20 percent. Since the bulk of judges' travel involves case-related work, the reduction would have a significant impact on how the courts accomplish their responsibilities and may force some litigants to travel long distances to have their cases tried.

The Senate report includes language directing the Judiciary to conduct a comprehensive study on sharing courtrooms. The Judicial Conference had previously studied the issue and concluded that in the interest of the effective administration of justice, a policy of one courtroom for each active judge is required. The RAND Corporation, in an independent review, advised that further study would be costly and inconclusive.

Defender Services Program

The amount of funding provided in both the House and Senate bills is well below the level required to fund the defender services program. With the number of representations under the program expected to increase by 8 percent in FY99 and the number of more expensive capital representations expected to grow by 22 percent, an increase is necessary. A $5 panel attorney rate increase is requested to avoid a crisis in the criminal justice system due to an inability to find qualified attorneys because of the low hourly rates currently paid.

A provision in the Senate bill would also limit monthly payments to panel attorneys to the compensation provided to the U.S. attorney in that district. This statutory change has the potential to disrupt proceedings mid-case if the limit is exceeded in a month and to install a cumbersome monitoring system to track payments.

FY99 Treasury and General Government Appropriations Bill

Letters have also been sent to congressional conferees appealing funding levels for courthouse construction projects in the FY99 Treasury and General Government appropriations bill. The letters ask conferees to reconsider the language in the bill that denies a cost-of-living salary adjustment for members of Congress, judges, and Executive Schedule officers.

In addition, conferees are being urged to delete section 404 of the Senate bill, a provision requiring that new courthouse construction projects requested in FY2000 meet design guide standards, reflect Judicial Conference priorities, and be accompanied by a courtroom utilization study. The Judiciary already complies with the intent of section 404.

The Judiciary also requests an appropriation to achieve Year 2000 computer compliance. Funding for compliance is provided to the Office of Management and Budget only for executive branch agencies.

Defender Services Program

Containing Costs While Delivering Effective Representation

The mission of the Defender Services program is to ensure that the right to counsel guaranteed by the Sixth Amendment, the Criminal Justice Act (CJA), and other congressional mandates is enforced on behalf of those who cannot afford to retain counsel and other necessary defense services. By fulfilling its mission, the Defender Services program helps to maintain public confidence in the nation's commitment to equal justice under law and ensure the successful operation of the constitutionally-based adversary system of justice by which both federal criminal laws and federally guaranteed rights and liberties of all citizens are enforced.

The Judiciary has no control over the number of individuals for whom it must provide services. This is a function of congressional action, Department of Justice policies, and U.S. attorney practices. However, the Judiciary shares congressional concerns regarding the growth in overall Defender Services spending. Judiciary studies undertaken to address these concerns reveal that, overall, costs are in line with the increase in the number of representations, the increasing proportion of capital prosecutions and capital habeas representations, and the cost incurred in a handful of extraordinarily expensive representations each year. The Defender Services program continues to work to identify "best practices" and institute procedures designed to ensure that CJA representation is both high quality and cost-effective, including the following:

❒ Developing a comprehensive performance measurement system to better assess the value received for the Defender Services program dollar.

❒ Studying federal death penalty cases to identify specific steps which could be taken in order to ensure that costs remain within reasonable limits. The Judicial Conference Committee on Defender Services' Subcommittee on Federal Death Penalty Cases conducted a year-long study of the cost, availability, and quality of appointed counsel in federal death penalty cases. The subcommittee collected qualitative and quantitative information from many sources, including the Department of Justice, which provided data on selected costs of *prosecuting* federal death penalty cases. The subcommittee, in its comprehensive report to the committee, concluded that "overall, the average cost of representation is reasonable in relation to the obligations imposed on defense counsel and the costs of prosecuting such cases."

❒ Improving management of the costs of capital habeas corpus cases by (1) encouraging courts to require counsel to submit proposed litigation budgets for court approval before commencement of representation and employing case management techniques commonly used in complex civil litigation and (2) urging each circuit judicial council to establish a special process for the review of any state death penalty habeas corpus cases within the circuit in which attorney compensation exceeds $100,000.

❒ Implementing budgetary procedures to control federal defender organization spending, such as (1) creating a special Judicial Conference Committee on Defender Services Subcommittee on Budget and Grant Requests to allow for heightened review of federal defender organization funding requests; (2) holding federal defender organizations accountable for annual workload projections as measured by caseload per attorney; and (3) requiring Administrative Office approval before filling assistant federal defender positions.

❒ Conducting a pilot project to explore the benefits of using a supervisory attorney to assist with administering the panel of private attorneys accepting court appointments and with reviewing payment claims submitted by attorneys and other service providers.

❒ Assessing the management of federal defender organizations to help the offices improve the effectiveness and efficiency of their operations, and collect and disseminate to all offices information regarding exemplary procedures, "best practices," improved processes, and enhanced internal controls.

❒ Replacing the out-moded system for making compensation payments to private panel attorneys and expert service providers with a more efficient one that will enhance financial accountability and integrity. The new system will improve significantly the timeliness, type, and quality of financial data used to manage and evaluate the Defender Services program.

❒ Developing, as a part of the Judiciary's January 1998 report to Congress on the Federal Defender program, a list of suggested cost containment and "best practices" recommendations that draw upon the contributions of various internal Judiciary groups as well as external criminal justice experts. The Judiciary is exploring mechanisms for implementation of many of these recommendations. In addition, AO staff have met with Department of Justice representatives regarding these initiatives. As a result, an

*See **Defender** on next page*

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 30 Number 9 September 1998

CHIEF DEPUTY CLERK, Eighth Circuit

The U.S. Court of Appeals for the Eighth Circuit seeks a chief deputy to assist the clerk with management and day-to-day operation of the clerk's office. The position is assigned to the clerk's St. Louis office and reports directly to the clerk. A law degree is required. Candidates must have substantial progressively responsible management experience; familiarity with federal court practice is highly desirable, as is a strong background in automation. Salary: comparable to JSP 13-15. Submit resume and references to Michael Gans, Clerk of Court, 1114 Market Street, Room 511, St. Louis, Missouri 63101. **Application deadline: October 1, 1998.**

STAFF ATTORNEY, Court of Appeals for the District of Columbia

Applications are being accepted for two positions as staff attorney for the Court of Appeals for the District of Columbia. Attorneys prepare legal memoranda on substantive and procedural motions, cases suitable for disposition without argument, and emergency matters; screen cases for the court's calendar; and manage appeals. A two-year commitment is required. Applicants should be graduates of an ABA-accredited law school, be admitted to the bar, and have at least one year of relevant experience after graduation. Law review membership or comparable legal research and writing experience is desirable. Litigation experience is advantageous. Graduation in the top 25 percent of law school class is preferred. Salary: CL 28-C 30 ($37,643 - $85,988) depending on qualifications. Send resumes to Valory Miller, Office of the Clerk, U.S. Court of Appeals, Room 5434, 333 Constitution Ave., N.W., Washington, D.C. 20001. **Application deadline: Open until filled.**

CALENDAR DATES FOR
THE THIRD BRANCH

Vol. 30 Number 9 September 1998

OCTOBER

5-7 **Monday-Wednesday**
Workshop for Judges of the Seventh and Eighth Circuits

5-9 **Monday-Friday**
Orientation for Newly Appointed Magistrate Judges

8-9 **Thursday-Friday**
Advisory Committee on Bankruptcy Rules

15-16 **Thursday-Friday**
Advisory Committee on Appellate Rules

18-20 **Sunday-Tuesday**
Third Circuit Conference

19-20 **Monday-Tuesday**
Advisory Committee on Criminal Rules

19-21 **Monday-Wednesday**
Workshop for Judges of the First Circuit

22-23 **Monday-Wednesday**
Advisory Committee on Evidence Rules

NOVEMBER

12-13 **Thursday-Friday**
Advisory Committee on Civil Rules

16-18 **Monday-Wednesday**
Workshop for Judges of the Fifth Circuit

16-18 **Monday-Wednesday**
National Workshop for Bankruptcy Judges III

Grand Juries & Jurors: By the Numbers

Grand juries have figured prominently in the news recently. The Administrative Office, which collects data on grand juries, reports that the number of grand jury sessions rose in 1998. From 1992 through 1997, the number of grand jury sessions convened in federal courts had been declining, from a high this decade of 11,571 in 1992 to 9,748 in the 12-month period ending June 1997. The June 1998 total of 10,148 sessions convened, however, may signal a reversal of the downward trend.

Grand jury activity had been declining even as, in recent years, the number of indictments per session has increased. From 1993 to 1996, the number of indictments per session fluctuated between a low of 3.72 and a high of 4.41. By June 1997, indictments per session had risen to 4.75 and in June 1998, indictments had grown to 5.23 per session. This increase may be due to a comparable growth in the number of criminal defendants in the district courts. Like the number of indictments per session, the number of defendants remained relatively stable from 1993 to 1996. Since 1996, there has been an upward swing that reached 76,047 in June 1998.

Despite the greater number of indictments per session, the hours a grand jury spends in a single session remain nearly constant. In 1992 it was 5.37 hours, and in 1998 it was 5.33 hours. The reasons for this are unclear. Improvements in case management may have made grand jury sessions more efficient, or grand juries may be disposing of a greater number of less complex cases. Generally, the recommended standard for a single session is approximately six hours of scheduled business, and it may take more than one grand jury session to produce a vote on an indictment.

Grand juries consist of not less than 16 members, the minimum number necessary to conduct business, and not more than 23 members. Alternates also are selected in most districts. This number varies from court to court but may number between four and eight. Some courts select significantly more alternates. In the 12-month period ending June 1998, there were 201,770 grand jurors in session, with nearly all grand jurors attending more than one session. This averages out to 19.88 jurors per session. Grand jury and petit jury members are selected in the same manner, usually from voter registration rolls and sometimes supplemented from motor vehicle registration rolls. Unlike petit jurors, grand jury members may ask questions during the session. They also will hear witness testimony and examine documents or other evidence to determine whether an indictment is justified. Grand jury members are paid an attendance fee of $40 per day, but after 45 days they may receive up to an additional $10 per day.

efender continued from previous page

O/Department of Justice Working roup will be established to explore ethods to maximize the use of technology in order to reduce costs.

The Defender Services program as experienced substantial growth workload over the last several ears. Between fiscal years 1993 and 998, the number of appointments nder the CJA have grown from ,000 to an anticipated 99,000. In Y99, it is projected that CJA appointments will number over 6,900. As the workload of the efender Services program increases, e Judiciary will continue to look for ays to provide effective representaon as required by the Constitution d congressional mandates while ntaining costs.

1999-2000 Judicial Fellows Program Invites Applications

The Judicial Fellows Commission invites applications for the 1999-2000 Judicial Fellows Program. The program, established in 1973 and patterned after the White House and Congressional Fellowships, seeks outstanding individuals from a variety of disciplinary backgrounds who are interested in the administration of justice and who show promise of making a contribution to the Judiciary.

Up to four Fellows will be chosen to spend a calendar year, beginning in late August or early September 1999, in Washington, D.C., at the Supreme Court, the Federal Judicial Center, the Administrative Office, and the U.S. Sentencing Commission. Candidates must be familiar with the federal judicial system and have at least one postgraduate degree and two or more years of successful professional experience. Fellowship stipends are based on salaries for comparable government work and on individual salary histories, but will not exceed the GS 15, step 3 level, presently $80,789.

Information about the Judicial Fellows Program and application procedure is available upon request from Vanessa M. Yarnall, Administrative Director, Judicial Fellows Program, Supreme Court of the United States, Room 5, Washington, D.C. 20543, or by calling 202/479-3415. The application deadline is November 6, 1998.

JUDICIAL MILESTONES

Appointed: Robert D. Sack, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Second Circuit, August 6.

Appointed: Raner Collins, as U.S. District Judge, U.S. District Court for the District of Arizona, August 19.

Appointed: Susan Oki Mollway, as U.S. District Judge, U.S. District Court for the District of Hawaii, August 4.

Appointed: Dan A. Polster, as U.S. District Judge, U.S. District Court for the Northern District of Ohio, August 10.

Appointed: Richard W. Roberts, as U.S. District Judge, U.S. District Court for the District of Columbia, July 31.

Appointed: Victoria A. Roberts, as U.S. District Judge, U.S. Court for the Eastern District of Michigan, August 11.

Appointed: Ralph E. Tyson, as U.S. District Judge, U.S. District Court for the Middle District of Louisiana, August 10.

Appointed: Terry Myers, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Idaho, August 1.

Appointed: James S. Starzynski, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of New Mexico, August 14.

Appointed: Joe B. Brown, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Tennessee, August 3.

Appointed: Lisa Cataldo, as U.S. Magistrate Judge, U.S. District Court for the District of Hawaii, August 11.

Elevated: Judge Neal Biggers, to Chief Judge, U.S. District Court for the Northern District of Mississippi, succeeding Judge L. T. Senter, Jr., July 31.

Elevated: Judge Robert L. Echols, to Chief Judge, U.S. District Court for the Middle District of Tennessee, succeeding Judge John T. Nixon, August 1.

Senior Status: Judge David S. Doty, U.S. District Court for the District of Minnesota, June 30.

Senior Status: Judge John T. Nixon, U.S. District Court for the Middle District of Tennessee, August 15.

Retired: Senior Court of Appeals Judge James K. Logan, U.S. Court of Appeals for the Tenth Circuit, July 15.

Retired: Bankruptcy Judge Alfred C. Hagan, U.S. Bankruptcy Court for the District of Idaho, July 31.

Deceased: Senior Court of Appeals Judge Frank X. Altimari, U.S. Court of Appeals for the Second Circuit, July 19.

Deceased: Senior Judge Richard M. Bilby, U.S. District Court for the District of Arizona, August 11.

Deceased: Senior Judge Robert W. Warren, U.S. District Court for the Eastern District of Wisconsin, August 20.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of September 1, 1998

Courts of Appeals	
Vacancies	17
Nominees	12
District Courts	
Vacancies	55
Nominees	29
Court of International Trade	
Vacancies	1
Nominees	1
Courts with "Judicial Emergencies"	31

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

dge Carol Bagley Amon, des of Conduct

Judge Robin J. Cauthron, Defender Services

Judge Walter K. Stapleton, Federal-State Jurisdiction

ommittee Chairs Change

Six new committee chairs will head Judicial nference committees beginning October 1, 1998, ith the term of one committee chair extended for nother year. Chief Justice William Rehnquist made e following appointments:

Judge Carol Bagley Amon (E. D. NY) succeeds dge A. Raymond Randolph (D. C. Cir.) as chair of e Committee on Codes of Conduct. Judge Robin J. uthron (W.D. Okla.) succeeds Judge Emmett pley Cox (11th Cir.) as chair of the Committee on efender Services. Judge Walter K. Stapleton (3rd r.) will succeed Judge Stephen Anderson (10th Cir.) chair of the Committee on Federal-State Jurisdic-n. Judge William J. Zloch (S.D. Fla.) succeeds dge Frank J. Magill (8th Cir.) as chair of the Com ttee on Financial Disclosure. Judge Harvey E. hlesinger (M.D. Fla.) succeeds Judge Phillip Pro (D. ev.) as chair of the Committee on the Administra n of the Magistrate Judges System. Judge Anthony Scirica (3rd Cir.) succeeds Judge Alicemarie H. otler (C.D. Calif.) as chair of the Committee on les of Practice and Procedure.

Chief Judge Julia Smith Gibbons (W. D. Tenn.) will nain as chair of the Committee on Judicial Re-urces for another year.

The Chief Justice makes all appointments to the dicial Conference committees and determines ure. Generally, committee chairs—with the ception of the chairs of the Executive, Judicial anch, and Budget Committees—serve for a term of ee years, with one reappointment possible. Five to years of cumulative committee service, including st committee assignments, is considered the ximum a member may serve.

Every two years, the Judicial Conference Executive cretariat surveys all judges to identify individuals o wish to serve as members of Conference com-ttees and their preferences. Membership on a mmittee is in addition to the responsibilities a dge carries as a member of his or her court.

Judge William J. Zloch, Financial Disclosure

Judge Harvey E. Schlesinger, Administration of the Magistrate Judges System

Judge Anthony J. Scirica, Rules of Practice and Procedure

INTERVIEW

An Interview with William S. Sessions

William S. Sessions is a partner at Sessions & Sessions law firm in Texas. He was appointed a district court judge to the Western District of Texas in 1974, serving on the federal bench until 1987, when he was named Director of the Federal Bureau of Investigation. In addition to many other positions, he has served as the chairman of the Federal Bar Association's Ethics Committee, as a member of the American Judicature Society, and most recently as the chair of the American Bar Association's Special Committee on Judicial Independence.

Q: As a federal judge and the former director of the FBI, you've worked in two of the three branches of government and you've seen the federal Judiciary from both inside and outside. What is the public perception of the Judiciary? Has it changed during your career?

A: The favorable public perception of the federal Judiciary remains at an amazingly high level in spite of the battering it has taken in the last 35 years. Although the mystical aspects of courts and judges have gradually dissolved in the glaring light of intense public interest, court television, and entertainment shows about lawyers and the Judiciary, the respect for federal judges and federal courts seems virtually undiminished. Americans seem to understand that our Constitution-based system is their best assurance for a consistent Rule of Law approach to dispute resolution—a system that has earned international respect. I believe that people want the courts to react to change more quickly but accept the fact that major changes are viewed in

See Interview on page 10

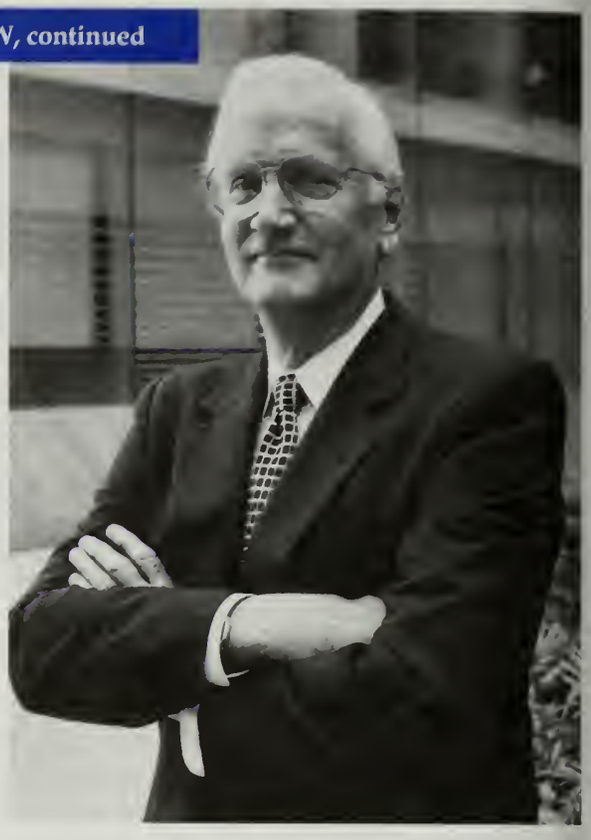
a variety of ways that must be considered, often in litigation, before a stable solution is found—and followed.

Q: Last year federal judges received their first cost-of-living increase since 1993, but it does not appear that Congress will pass the necessary legislation this year to give judges a called-for increase in 1999. What do you feel is behind the difficulty in increasing judges' pay? Should federal judges' pay be linked to those of members of Congress and the Executive Schedule?

A: I believe that there is a genuine difference of opinion about the need for a stable and fair plan for systematic pay increases for the federal Judiciary. The Congress in 1989, even though the linkage between congressional pay and judicial pay was continued, handled that need in a very reasonable way—by providing for a substantial "catch-up" raise and for an annual COLA. The failure of Congress to give that COLA in many of the years that followed has caused what I believe to be an unwise imbalance to accrue. Had the COLAs been given annually thereafter, that imbalance between judicial salaries and the substantial salaries that eminent lawyers can command would not have been so severe. It seems logical for Congress to recognize that the imbalance is a detrimental factor in recruiting and retaining the best of legal talent for the bench. If Congress chooses to deny itself the raise in pay, it should consider carefully the exacerbation of the imbalance and the resultant detriment to the maintenance of a strong and able federal Judiciary and grant the COLA to the Judiciary.

Q: You were the first chair of the recently formed ABA Special Committee on Judicial Independence. Why was that committee formed, and what does it hope to accomplish?

A: The special committee was authorized by the ABA Board of Governors in July of 1997 and appointed by ABA President Jerome Shestack in San Francisco at the annual ABA meeting on August 1, 1997. In abbreviated form, its mandate was to "assist courts . . . in considering and effectuating responses to infringement of judicial independence," to "encourage public awareness and appreciation of the importance of judicial independence and merit selection to the American judicial system and the rule of law;" to "make recommendations on ways to improve and enhance the institutional independence and efficiency of . . . judiciaries and encourage appropriate accountability to enhance judicial independence and the efficient administration of justice" and, finally, to "act as a clearinghouse for ABA activities dealing with the independence of state, local and administrative judiciaries."



William S. Sessions

The committee, since August of 1997, has laid a substantial foundation for carrying out the mandate given it. It has joined with the Lawyers Conference of the Judicial Division of the ABA to ensure the nationwide implementation of the Model Plan for Response to Criticism of Judges. It has received substantial encouragement and financial support of other institutions to develop model programs for effectively dealing with unfair, harsh, and untrue criticism of judges and courts. It has spoken out in the media in response to unfair, harsh, untrue criticism or disciplining of judges and has supported public discussion encouraging appropriate accountability and efficiency of courts and judges. Additionally, it has begun the initial work to create an educational video on judicial independence as a critical element underpinning the Rule of Law in America.

Q: Judges are vulnerable to political attacks from critics inside the government and outside. You've written that the founding fathers were confident that the judicial system could survive and flourish despite the attacks. How does the Judiciary do that? And should federal judges respond to public criticism of their judicial

ecisions and to calls for impeach-
ıent based on disagreement with
ecisions?

A: Since early in 1996, the high-level attacks from within the xecutive and legislative branches of ıe government are difficult to deal ith because basic political philoso-hy is often involved and thus the ttackers apparently feel the attack is stified because of the importance ıey attach to the particular issue ıvolved—crime—abortion—guns. f course each issue has intense and ınstant public interest. Because dges have traditionally felt bound y their ethical duty to stand and ke it, the war of words rages about ıem with virtually no defense being ised and articulated in their efense. The problem is not solely a ıncern for the federal Judiciary. ate judiciaries are at least as ılnerable, principally because of e processes by which those judges e chosen and retained.

Arthur T. Vanderbilt, former hief Justice of the New Jersey ıpreme Court, in his great speech the law students at an ABA ınual meeting took the position at "a great lawyer does his part dividually and as a member of the ganized bar to improve his profes-ın, the courts and the law," and ıas the responsibility of acting as intelligent, unselfish leader of ıblic opinion within his (her) own rticular sphere of influence." The BA *Suggested Program Outline for e Appropriate Response to Criticism of dges and Courts* has great promise r nationwide response, in the edia, in schools, in civic gatherings d clubs, and in the Congress, to rsh, unfair or untrue criticism. Bar sociations and lawyers, nation-de, will not only respond to tacks on the Judiciary but, as ıportant, will develop educational ograms that will bring about a eper public understanding of the tical importance of an indepen-dent Judiciary to the Rule of Law, which underpins our free enterprise system and our democracy.

Q: With attacks on judges and stagnating pay, what effect do you feel this may have on the quality of people attracted to serve on the federal bench?

A: This is a very tough but delicate problem. Unquestionably, the federal standards in many areas, including the courts and the Judiciary, set the standard for the states and the cities of America. The character, intelligence and competence of men and women who are selected and who choose to serve as federal judges will continue to be the best available, but we cannot allow the system to fall into disrepair, either in the housing for the courts or the support we afford them, in pay and security. Each of these facets of support will ultimately be reflected in the state and local systems and will encourage lawyers to serve, relying upon the strength and attractiveness of the court system. The cream will rise to the top! We must support the courts with all the strength and determination we can muster!

Q: Your areas of legal practice now include mediation and arbitration-areas into which the federal courts also are expanding. What are your thoughts on alternative dispute resolution in the federal courts?

A: My thoughts went immediately to the crisis that exploded upon the Western District of Texas when Judge John H. Wood, Jr. was assassinated May 29, 1979. Recognizing that the civil docket in San Antonio would be completely drowned by the huge criminal docket with the additional burden of the Speedy Trial Act of 1974, I asked the San Antonio Bar Association to devise a court-annexed ADR procedure that would meet the needs of the bar and the court. The bar proposed a court-annexed arbitration plan which was adopted by the court, enthusiastically supported by the lawyers and continues to this day. It is joined now by the Alternative Dispute Resolution Rule, both of which operate splendidly under the local rules. My view is that it is most important that the courts facilitate disposition of litigation in an efficient manner and that the public be aware that the court is overseeing the processes of the litigation and thus the public can have confidence that the judicial system is working efficiently and properly. Court-annexed ADR programs have the potential to splendidly fill these needs and allow the courts to meet the burgeoning workload.

Q: As the judicial branch nears the millennium mark, what, if anything, would you change in the federal Judiciary?

A: The federal Judiciary is probably the most respected judiciary in the world. The support mechanisms for the work of the federal Judiciary are extraordinarily able and diligent. Alvin & Heidi Tofflers' *Future Shock* and *The Third Wave* enabled us to understand that the future can be predicted with amazing clarity if you are able to read the signs along the trail and interpret them. The ability to meet change head on and meet the challenge of that change will determine the future of the Judiciary. It must meet the expanding needs of the international business community, the international telecommunications industry, the international intellectual property demands, the international criminal problems. To do this,

See ***Interview*** *on page 12*

Interview continued from page 11

the federal Judiciary needs to direct its attention to creating streamlined and efficient ways to meet these needs. The alternative is to be "too late with too little" and to thus be by-passed as incapable of meeting the demands made on it. This is all very easy to say but very hard to do. We might begin with renewal of eclectic conferences on the model of those sponsored by The Brookings Institute in the 1970s where each of the branches of the federal government could learn from and be challenged by others. Futurists, such as the Tofflers and Nesbitt, might lay the groundwork for these discussions and exchanges.

Additionally, the Judiciary must lead in finding and proposing new models and methods for assuring that the judicial needs of all areas of the country are met in a more timely fashion. It is possible that Congress might be persuaded to meet the needs of a fast-growing area by adding a "next vacancy" type of appointment that would be taken from an area needing less judicial resources. The new number of judges would, in that circumstance, not be permanently increased, and the needs of each area would be met. Consideration might be given to creating an emergency pool of judgeships that could be assigned by the Chief Justice or the Judicial Conference in the interim between the usual omnibus judgeship legislation. Had such a capability been in place when the drug problem exploded on Miami, Florida, the long delay that resulted in a massive backlog might have been avoided.

Finally, I would make a strong and sustained effort to persuade Congress of the wisdom of finding a way to assure that the pay of the Judiciary does not lag dangerously behind that of the legal community. That lag not only causes a nagging preoccupation caused by the problem but almost certainly inhibits the ability of the President to find and keep nominees of the high quality demanded by the difficult nature of judges' work. It may be that the Congress will decide that the time has finally come for dealing with the judicial pay issue by focusing intensely on the needs of the Judiciary, without other distractions.

THE THIRD BRANCH

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THE THIRD BRANCH

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October 1998

Judicial Conference Convenes Fall Meeting

At its biannual meeting last month n Washington, the Conference voted o ask its Committees on Codes of onduct and Financial Disclosure to onsider if the Conference should ncourage all courts to maintain, in he clerk's office, a list for each judge f the companies in which the judge, r the judge's spouse, or minor child esiding in the household, has a nancial interest requiring recusal. he information would be made vailable to litigants upon written equest.

In addition, the Judicial Conference nancial Disclosure Committee irected that the form, which is used to request a copy of a disclosure report, be available on the Judiciary's Internet site (*www.uscourts.gov*); deleted the requirement that any requests for reports be notarized; and reduced the cost for copying reports from 50 cents a page to 20 cents.

The Financial Disclosure Committee found "these changes to be positive steps in improving public access to financial disclosure reports without compromising the security of judges."

In additional action, the Judicial Conference voted to seek independent funding for courthouse construction, including funding for planning new projects, in the Judiciary's budget request beginning in fiscal year 2000. However, in light of negative congressional reaction, the chairmen of the Security and Facilities and Budget Committees, and Administrative Office Director Leonidas Ralph Mecham decided not to pursue direct funding in FY 2000. Instead, they will urge OMB, General Services Administration (GSA), and Congress to provide the necessary funds.

The Conference decision to seek direct funding for courthouse construction projects follows two consecutive years in which the Office of Management and Budget (OMB) failed to seek any money for this purpose. Each time the Judiciary was forced to redouble its efforts with Congress in an effort to have the funds restored. All indications are that OMB will not request any courthouse funds for FY 2000.

In other action, the Conference

■ Agreed to urge the President, with the advice and consent of the Senate, to continue the long-standing tradition of appointing a federal judge to chair the U.S. Sentencing Commission. If Congress adjourns in October without acting on any of the Commission's six pending vacancies, Judge Richard P. Conaboy—Commission chairman—will be the only remaining commissioner. He has announced his resignation effective October 31. In the Commission's

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Judiciary Opens Electronic Highway

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14-year history, its chairman has always been a federal judge.

■ Approved the document called *The Judicial Conference of the United States and its Committees*, which is a compilation of established Conference policies and committee practices. The document also includes information on the organization and operating procedures of Conference committees, the role of committee chairs, the formation of subcommittees, the preparation of agendas and submission of committee reports, access to committee reports, committee appointments, and more.

■ Agreed to establish an Internet fee of 7 cents a page for public users of the Judiciary's Public Access to Court Electronic Records system (PACER). The Judiciary is in its ninth year of offering various electronic access services. Registering more than 30,000 users a year, PACER provides legal, business, community and other interested parties direct, rapid, and easy access to appellate slip opinions, argument calendars, case dockets, and other useful courthouse information. The current fee for the dial-in use of PACER is 60 cents a minute. The application of Internet technologies to this program may lower the operating costs of the PACER system, make court and case information more widely available, and offer the opportunity to add information and services to the public at a modest cost.

Since 1991, Congress has required the Judiciary to charge users a reasonable fee to reimburse the Judiciary for expenses incurred in providing these services. The revenue generated from the fees is used to fund the Judiciary's full range of electronic public access services. The funds also provide each court with hardware and software to support public access services.

Courts may provide at no cost a variety of local court information, including local rules, court forms, news items, court calendars, opinions designated by the court for publication, and other information—such as court hours, court location, and telephone listings.

Following the September meeting of the Judicial Conference, members gathered for a reception in the West Conference Room of the Supreme Court.

Right: *(from left) Judge William Zloch (S.D. Fla.) and AO Director Leonidas Ralph Mecham.*

Below: *(from left) Judge Wm. Terrell Hodges (M.D. Fla.), Minnesota State Judge Marilyn Rosenbaum and Judge James M. Rosenbaum (D. Minn.).*

■ Received and adopted the recommendations contained in the report entitled *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation*. The number of defendants charged with offenses punishable by death has gone from 12 in 1991 to 153 in 1997.

The report addresses the cost, availability, and quality of defense representation in federal death penalty cases and recommends steps that should be taken in order to keep expenditures in these cases within reasonable limits. It was prepared by the Subcommittee on Federal Death Penalty Cases of the Judicial Conference Committee on Defender Services.

In general, the report concluded that the judges assigned to federal death penalty cases have been appropriately conscious of the need to monitor and control defense costs. Nevertheless, recognizing that the cost of defending death penalty cases is almost always greater than the cos of defending non-death penalty cases, the report recommends the implementation of additional cost-containment measures.

Among the recommendations contained in the 107-page report are

- Courts should assure the appointment of highly qualified counsel whenever the defendant is charged with an offense punishable by death. The hourly rate authorized for compensation of counsel should remain high enough to attract a sufficient number of qualified attorneys.
- Courts should require lawyers to develop case budgets to ensure the most effective and economical

use of resources. The Judicial Conference should develop guidelines for case budgeting, and judges and lawyers should be trained in the budgeting process.

A copy of the report is available on the Judiciary's website at *www.uscourts.gov*.

■ Acted on numerous recommendations from the National Bankruptcy Review Commission (NBRC). The nine-member independent commission studied issues and problems relating to the bankruptcy code and in October 1997 submitted a report containing more than 170 recommendations to Congress, the President, and the Chief Justice. Because some of the recommendations have a potential impact on the workload and administration of the courts, they have been studied by relevant Conference committees. Among other actions, the Conference voted to

- ❍ Support establishment of a national filing system that would identify each bankruptcy case with a unique identifier, to the extent this can be done with proper regard for safeguarding the privacy of sensitive personal information.
- ❍ Oppose the creation of bankruptcy courts under Article III of the Constitution and the recommendation that at the completion of their 14-year terms, bankruptcy judges should be appointed to fill existing vacancies by the President with the advice and consent of the Senate.
- ❍ Support amendments to the Fair Credit Reporting Act that would require credit reporting agencies to report Chapter 13 filings (where the debtor attempts to repay all or a percentage of his or her debts pursuant to a plan of reorganization) differently from Chapter 7 (liquidation or "straight bankruptcy") filings.

(From left) Judge John G. Heyburn II (W. D. Ky.), Judge Peter C. Dorsey (D.Conn.) and Judge Joseph DiClerico (D. N.H.).

■ Rescinded its September 1993 policy recommending to all judicial officers that March 1 of the year before a clerkship begins be the benchmark starting date for law clerk interviews. This action was taken because it has become apparent that the Conference policy has not been universally followed and is not an accurate reflection of the practice in many courts.

(From left) AO Director Leonidas Ralph Mecham, ex-officio member of the Executive Committee, with fellow members of the Executive Committee Judge Ralph G. Thompson (W.D. Okla.), Chief Judge Boyce Martin (6th Cir.), Chief Judge Henry A. Politz (5th Cir.), Committee Chair Judge Wm. Terrell Hodges (M.D. Fla.), Chief Judge Lloyd D. George (D. Nev.) and Chief Judge Juan R. Torruella (1st Cir.). Executive Committee member Chief Judge Ralph K. Winter (2nd Cir.) is not pictured.

Structural Alternatives Commission Releases Draft Report

The Commission on Structural Alternatives for the Federal Courts of Appeals has released a draft report of its preliminary recommendations on the court of appeals system. The report is available at *http://app.comm.uscourts.gov*.

Congress established the Commission last fall to "study the present division of the United States into the several judicial circuits; study the structure and alignment of the Federal Court of Appeals system, with particular reference to the Ninth Circuit; and report to the President and the Congress its recommendations for such changes in circuit boundaries or structure as may be appropriate for the expeditious and effective disposition of the caseload of the Federal Courts of Appeals, consistent with fundamental concepts of fairness and due process." Public comment on the draft report, which must be made by November 6, 1998, will be considered by the Commission before issuing a final report, due to be delivered to Congress in December.

In addition to its own research into the workings of the courts of appeals, beginning last March the Commission conducted a series of public hearings in Atlanta, Dallas, Chicago, New York, Seattle, and San Francisco to allow the public to comment on the present system. Over 90 witnesses testified at these hearings from the academic, legal, and judicial communities. Statements and comments were submitted by many more and are available on the website.

Retired Supreme Court Justice Byron White chairs the Commission, whose members are Judge Gilbert S. Merritt (6th Cir.), Judge Pamela Ann Rymer (9th Cir.), Judge William D. Browning (D. Ariz.), and N. Lee Cooper of Birmingham, Alabama. Daniel J. Meador, the James Monroe Professor of Law Emeritus at the University of Virginia, serves as executive director.

Commission members and support staff met in Washington last month to draft the preliminary recommendations that are now available for public comment.

Recommendations in Brief

The report's tentative recommendations include the following

❒ That Congress enact a statute organizing the Ninth Circuit Court of Appeals into three regionally based adjudicative divisions, each division with a majority of its judges resident in its region, and each having exclusive jurisdiction over appeals from judicial districts within its region. Each division would function as a semi-autonomous decisional unit. A circuit division would resolve conflicts of law between regional divisions, replacing the current limited en banc system. The administrative responsibilities of the Ninth Circuit itself would continue to be carried out within current circuit boundaries.

❒ That Congress enact a statute authorizing any court of appeals with more than 13 judgeships to organize itself into adjudicative divisions. The court would have an option in this regard until its membership exceeds 17 judgeships, at which time it would be required to adopt a divisional plan.

❒ That Congress enact a statute authorizing each court of appeals to decide some types of selected cases using panels of two rather than three judges.

❒ That Congress enact a statute authorizing circuit judicial councils to establish district court appellate panels to provide appellate review in designated categories of cases with panels of two district judges and one circuit judge, with discretionary review available thereafter in the court of appeals.

❒ That Congress not authorize direct review in the courts of appeals of bankruptcy court decisions, but rather consider several specific alternatives.

Two members of the Commission wrote separately to present a proposal to reduce diversity jurisdiction in the federal courts.

Comments can be sent to the Commission by November 6, 1998

See ***Report*** *on next page*

Last Links in Judiciary's Data Communications Network Complete

With the addition of the final court sites this month, the federal Judiciary has completed a nationwide internal data communications network (DCN) for all Judiciary employees. The DCN was seven years in the making—and was finished one year ahead of the projected completion date. It connects 700 federal court sites across the country and more than 28,000 Judiciary employees, who now may send electronic messages, files, and information to a single person or an entire group of people over a private network, in the same building, or across the country.

"I've watched the DCN grow over the years with the expectation that its full implementation would benefit the Judiciary in many ways, and we are discovering more benefits than we even anticipated," said Administrative Office Director Leonidas Ralph Mecham. "The DCN gives the federal courts the electronic highway it needs to support its responsibilities in the administration of justice."

The DCN has grown steadily since January 1994 when just 17 percent of the court locations were connected to the network. As the DCN proved its usefulness, and at the recommendation of the Judicial Conference Committee on Automation and Technology, the Judicial Conference Executive Committee approved funds to accelerate implementation of the DCN. All major court and divisional locations now are linked by the data communications network.

The courts and the Administrative Office use the DCN to draft and produce final documents for everything from court opinions to policy recommendations by Judicial Conference committee members. The DCN also provides an infrastructure for the J-Net, the Judiciary's intranet website. The site is visited over 2,000 times daily by Judiciary employees looking for reports, statistics, newsletters, directories, manuals, and other information.

The internal network not only serves as an information source, it is also a cost-saving venture. Using the DCN's e-mail feature alone should save $30,000 with every 10,000 messages sent in lieu of mailed letters.

The Judiciary capitalizes on the DCN's nationwide reach to conduct surveys, collect data, conduct group discussion forums, and offer long distance instruction. The DCN also supports current and soon-to-be implemented national systems for budgeting, accounting, human resources, jury management, and lawbook acquisition.

The DCN also lets the Judiciary consolidate software. Communications devices, such as modems, may be shared as well as network versions of software, eliminating the purchase of individual software licenses for every employee. Using the DCN's electronic mail feature alone should save $30,000 with every 10,000 messages sent in lieu of mailed letters.

"The DCN has for years been viewed by the committee as the backbone which, when developed, would support many other automated systems and make massive amounts of information available electronically," said Judge Edward W. Nottingham (D. Colo.), Chair of the Judicial Conference Committee on Automation and Technology. "Now that it has been completed—ahead of schedule and under budget—we can focus attention on these other parts of the *Long Range Plan for Information Technology*, while maintaining this essential communications tool."

***Report** continued from previous page*

using one of the following alternatives:

1. By electronic mail through the Internet to the following address *Appellate_Commission_Comments@ao.uscourts.gov*
2. By electronic mail to the following address for those *within* the judicial branch only using cc:Mail—*Appellate Commission Comments*.
3. By mail to the Commission on Structural Alternatives for the Federal Courts of Appeals, Thurgood Marshall Federal Judiciary Building, Washington, DC 20544.
4. By fax: 202-208-5102.

For those using mail or fax, the Commission asks that a copy of the comments also be submitted on a computer diskette in a format readable by a standard word processing program. Further instructions about sending submissions by electronic mail are available on the Commission's website at *http://app.comm.uscourts.gov*.

All comments received will be placed on the Commission's website.

Continuing Resolutions Pass as Omnibus Bill Awaits Vote

With other matters on its mind, the 105th Congress was late in addressing many of the fiscal year 1999 funding measures, including the Commerce, Justice, State, and Judiciary bill. As of October 20, the government continued to operate on a series of short-term continuing resolutions. While the level of funding for the Judicial Branch is not particularly controversial, political issues such as sampling for the year 2000 census, which are highly contentious, are delaying final action on the Commerce, Justice, State, and Judiciary bill.

The November issue of *The Third Branch* will provide detailed information on the Judiciary's funding for FY99.

The Senate has approved an appropriations bill that would give the Judiciary $4.01 billion in total obligations, and the House's appropriations bill gives the Judiciary $4.08. The Judiciary had requested $4.15 billion in fiscal year 1999 and has appealed the FY99 funding levels in letters to members of Congress as insufficient to sustain current services. Under the continuing resolutions, the courts' funding allotments for the interim are set at FY98 levels.

As *The Third Branch* went to press, the Judiciary's FY99 appropriation is to be incorporated into an omnibus bill with the remaining appropriations bills, presenting the entire package to Congress for an up or down vote. Press reports indicated that both the House and Senate would pass, and the President would sign, the omnibus bill. Failing passage, the Judiciary and other agencies would survive on a succession of continuing resolutions until legislation finally is agreed upon.

In December 1995, the government shut down for four days when Congress failed to pass appropriations bills and all the continuing resolutions expired. At that point, Chief Justice William H. Rehnquist wrote to Vice President Gore, President of the Senate, and Representative Newt Gingrich, Speaker of the House, asking that Congress take action to pass a free-standing FY 1996 funding bill for the Judiciary. The Judiciary finally received funding for 1996 nearly four months after the start of the fiscal year.

Meeting Considers Mass Torts Problems

A conference of state and federal judges, lawyers, and academics was convened last month at the Administrative Office to assist representatives of several Judicial Conference committees in their study of the problems of mass torts. Such problems include forum shopping by defendants and plaintiffs; high attorney fees; inefficient use of judicial officer resources; inadequate coordination between state and federal courts; allocation of awards to undeserving claimants; unfair pressure on companies to settle marginal claims or risk the loss of their entire company; and scientific evidence that is often decisive, yet unsettled, in the resolution of a case.

Various proposals on handling mass torts were discussed, and the mass torts group will consider the suggestions presented. A report will be made to the Chief Justice early next year that will identify possible approaches to the problems.

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH

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CIRCUIT MEDIATOR, Sixth Circuit

The U.S. Court of Appeals for the Sixth Circuit is seeking an experienced lawyer for a full-time or three-quarter time position as a mediator in its Mediation Office, located in Cincinnati, Ohio. The circuit mediator conducts telephone and in-person conferences with counsel, sometimes accompanied by clients, in new civil appeals in order to initiate and mediate settlement negotiations, clarify legal issues and eliminate procedural problems where appropriate and possible. Applicants should have knowledge of civil practice and procedure, strong legal analytical skills, and proven exceptional ability to manage collaborative problem-solving and consensus building processes involving lawyers and non-lawyers in highly competitive situations. Mediation experience and training are desirable. Salary: $62,500 per year or higher, depending on experience and qualifications, plus benefits. Submit resumes or letters or interest to Mr. Robert W. Rack, Jr., Chief Circuit Mediator, U.S. Court of Appeals for the Sixth Circuit, Room 245, Potter Stewart U.S. Courthouse, Cincinnati, Ohio 45202. **Application deadline: November 30, 1998.**

FEDERAL PUBLIC DEFENDER, District of South Dakota

The U.S. Court of Appeals for the Eighth Circuit is accepting applications for the newly created position of Federal Public Defender for the District of South Dakota, headquartered in either Pierre, Sioux Falls, or Rapid City. Appointment: four years. The annual salary is an amount not to exceed the salary of the U.S. Attorney for the district, currently $118,400. The Federal Public Defender provides federal criminal defense services to individuals unable to afford counsel. Application forms are available at the offices of the district court clerk in Sioux Falls, Rapid City, and Pierre, South Dakota, and in the Office of the Circuit Executive. Please forward four copies of the completed application to the Office of the Circuit Executive 1114 Market St., Suite 611, St. Louis, MO 63101. **Application deadline: November 15, 1998.**

U.S. BANKRUPTCY JUDGESHIP, Western District of Kentucky, Louisville

The District Court for the Western District of Kentucky is seeking applicants for a bankruptcy judgeship position. Appointment is for a 14-year term. Salary: $125,764. Full public notice with qualification standards is posted in the offices of the clerks of the U.S. Court of Appeals for the Sixth Circuit and the U.S. District and Bankruptcy Courts for the Western District of Kentucky. For further information and application forms, contact the Office of the Sixth Circuit Executive, U.S. Court of Appeals for the Sixth Circuit, 503 Potter Stewart U.S. Courthouse, Cincinnati, Ohio 45202-3988. Phone 513/564-7200. **Application deadline: November 20, 1998.**

FEDERAL PUBLIC DEFENDER, District of Utah

The Court of Appeals for the Tenth Circuit is accepting applications for the newly created position of Federal Public Defender for the District of Utah, with offices to be headquartered in Salt Lake City. Appointment: 4 years. Salary: $118,400. Applications are available at www.ck10.uscourts.gov, or by writing to the Office of Circuit Executive, Byron White U.S. Courthouse, 1823 Stout Street, Denver, CO 80257, Attn: FPD Recruitment – District of Utah. Applications also are available at circuit and district clerks' offices in the Tenth Circuit. **Application deadline: no later than 5:00 p.m. MST, November 20, 1998.**

FEDERAL PUBLIC DEFENDER, District of New Mexico

The Court of Appeals for the Tenth Circuit is accepting applications for the position of Federal Public Defender for the District of New Mexico, with headquarters in Albuquerque. Appointment: 4 years. Salary: $118,400. Applications are available at www.ck10.uscourts.gov, or by writing to the Office of Circuit Executive, Byron White U.S. Courthouse, 1823 Stout Street, Denver, CO 80257, Attn: FPD Recruitment – District of New Mexico. Applications also are available at circuit and district clerks' offices in the Tenth Circuit. **Application deadline: no later than 5:00 p.m. MST, November 20, 1998.**

CALENDAR DATES FOR

THE THIRD BRANCH

Vol. 30 Number 10 October 1998

NOVEMBER

12-13 **Thursday-Friday**
Advisory Committee on Civil Rules

16-18 **Monday-Wednesday**
Workshop for Judges of the Fifth Circuit

16-18 **Monday-Wednesday**
National Workshop for Bankruptcy Judges III

DECEMBER

1-2 **Tuesday-Wednesday**
Committee on Criminal Law

1-4 **Tuesday-Friday**
Orientation for Newly Appointed Bankruptcy Judges

2-3 **Wednesday-Thursday**
Committee on Judicial Resources

2-4 **Wednesday-Friday**
Committee on Security and Facilities

2-4 **Wednesday-Friday**
Committee on Court Administration and Case Management

7-8 **Monday-Tuesday**
Committee on Administration of the Magistrate Judges System

7-8 **Monday-Tuesday**
Committee on the Judicial Branch

10-11 **Thursday-Friday**
Committee on Defender Services

10-11 **Thursday-Friday**
Committee on the Administrative Office

Congress Authorizes Courthouse Projects for 1999

The Senate Committee on Environment and Public Works has authorized 14 fiscal year 1999 courthouse projects at full funding levels. Earlier, the House Committee on Transportation and Infrastructure authorized nine courthouse projects, but decided to defer the project slated for Savannah, Georgia. The House Committee authorized four remaining projects during the last week of October. As a result, the conferenced House-Senate FY99 Treasury and General Government

Judge Norman H. Stahl (1st Cir.), chair of the Conference Committee on Security and Facilities, asks the Senate Committee on Environment and Public Works to authorize courthouse projects.

Appropriations Act contained funds for 13 courthouse projects in FY99. Congress, however, has been unable to agree on several non-courthouse related provisions in the appropriations bill, so the bill is stalled for now.

In Senate hearings last month, Judge Norman H. Stahl (1st Cir.), chair of the Conference Committee on Security and Facilities, asked the Senate Committee on Environment and Public Works to authorize the 14 courthouse projects whose funding had been withdrawn by the Office of Management and Budget before the 1999 budget was transmitted to Congress. Stahl testified on behalf of the Judicial Conference on the Judiciary's courthouse construction program and the fiscal year 1999 budget. He was accompanied by Judge B. Avant Edenfield (S.D. Ga.), Bankruptcy Judge Lamar Davis (S. D. Ga.), and Judge Michael Ponsor (D. Mass.).

Senate Committee Chair John H. Chafee (R-RI) opened the hearing saying he believed the physical characteristics of federal buildings should be commensurate to the duties that are carried out in them, but that Congress had a duty to the American public "to look for the most effective space, at the very best deal possible." In a reference to the committee's urging of the Judicial Conference and GSA to work to guarantee all recommended projects are meritorious and worthy of taxpayer funds, Chafee said, "I believe that the GSA/courts partnership and the additional steps taken by the Judiciary are slowly helping restore confidence in publicly funded construction. Certainly, it is key to the willingness of this Committee and of the Senate in general to consider courthouse projects positively."

The committee heard Stahl testify that the 14 courthouse projects were ranked and approved by the Judicial Conference for FY99 as part of the Judiciary's 5-year plan. This prioritization process requires that all courthouse projects be scored, considering four factors: the year the courthouse is out of space; the level of security problems; the number of judges affected; and operational concerns. Stahl also outlined changes to the planning process and design standards, including revisions to the *U.S. Courts Design Guide*, that have contributed to cost-containment. According to Stahl, the Judiciary also is planning a major review of the entire space and facilities program. Stahl gave similar testimony in March and July to the House Committee on Transportation and Infrastructures Subcommittee on Public Buildings and Economic Development.

The Senate committee also considered S. 2481, the Public Buildings Reform Act. Among other things, the bill would provide the GSA administrator with the authority to set housing standards for the judicial branch and to determine essential characteristics of accommodations needed by the courts. "We continue to be concerned about this aspect of any public buildings reform initiative," Stahl told the committee. "In our view, the user of a facility is in the best position to determine what it needs to do its work."

Courthouse projects authorized by Congress for Fiscal Year 1999

Brooklyn, New York
Biloxi/Gulfport, Mississippi
Denver, Colorado
Eugene, Oregon
Laredo, Texas
Springfield, Massachusetts
Jacksonville, Florida
Wheeling, West Virginia
Little Rock, Arkansas
Cape Girardeau, Missouri
Greeneville, Tennessee
San Diego, California
San Jose, California

JUDICIAL MILESTONES

Appointed: John D. Kelly, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Eighth Circuit, August 25.

Appointed: Raner Collins, as U.S. District Judge, U.S. District Court for the District of Arizona, August 19.

Appointed: Sam A. Lindsay, as U.S. District Judge, U.S. District Court for the Northern District of Texas, September 1.

Appointed: Dan A. Polster, as U.S. District Judge, U.S. District Court for the Northern District of Ohio, August 10.

Appointed: Mary F. Walrath, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Delaware, September 9.

Elevated: Judge Kim M. Wardlaw, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, August 3.

Elevated: Judge Frank J. Polozola, to Chief Judge, U.S. District Court for the Middle District of Louisiana, succeeding John V. Parker, September 1.

Elevated: Bankruptcy Judge Peter J. Walsh, to Chief Judge, U.S. Bankruptcy Court for the District of Delaware, succeeding Helen S. Balick, September 9.

Senior Status: Robert E. Cowen, U.S. Court of Appeals for the Third Circuit, September 4.

Retired: Magistrate Judge Fidencio G. Garza, Jr., U.S. District Court for the Southern District of Texas, August 31.

Retired: Senior Judge James M. Ideman, U.S. District Court for the Central District of California, September 11.

Retired: Senior Judge Pierce Lively, U.S. Court of Appeals for the Sixth Circuit, January 30, 1998.

Deceased: Bankruptcy Judge Sidney C. Volinn, U.S. Bankruptcy Court for the Western District of Washington, August 23.

Attorney General Meets with Executive Committee

Before the Judicial Conference, the Executive Committee met with Attorney General Janet Reno, shown here with Judge Wm. Terrell Hodges, chair of the Committee, to discuss matters of mutual concern between the Department of Justice and the Judiciary.

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Photo on page 12 courtesy of the Supreme Court

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JUDICIAL BOXSCORE

As of October 1, 1998

Courts of Appeals	
Vacancies	17
Nominees	12
District Courts	
Vacancies	53
Nominees	29
Court of International Trade	
Vacancies	1
Nominees	1
Courts with "Judicial Emergencies"	34

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Courts Back in Service Following Hurricane Georges

Hurricane Georges cut a wide and vet swath from the Caribbean across o the Gulf states leaving several ederal court facilities damaged in its ath. Fortunately, in a hurricane that laimed well over 100 lives, no eaths or injuries of judicial officers r court employees were reported. nticipating the worst from Hurri- ane Georges, the Administrative ffice Disaster Response Team, eaded by William Lehman, coordi- ated assistance to the affected urts, including special procure- ent authority to replace damaged quipment and restore function. hey also assessed the need for ecial payroll transfers where banks ight be closed by the storm.

The federal buildings in the dis- ict of the Virgin Islands generally eathered Georges with minor dam- ges. In St. Croix, there was water in vo courtrooms, jury rooms, and the rary of the Almeric L. Christian ederal Building, but the building opened for business shortly after e storm passed. The exception was e court facilities in the St. Thomas deral building, where a leaking of damaged the main courtroom nd the new library. Although the urt was quickly up and running, e courtroom will be out of service r some time. "We've been hit so any times by hurricanes, we're sed to it," said Chief Judge Thomas Moore (D. V.I.). "The Islands have en rebuilt to new code and some wer and many phone lines are w underground. Still, we consider rselves blessed. Georges was a rderline Category 5 hurricane, and iraculously dropped to a Category before it hit us. Se we came rough fairly well."

The federal buildings in the dis- ict of Puerto Rico also generally me through Georges with minor mages. Eighty percent of Puerto co was without electricity and ater for days after the hurricane, with sections of San Juan slowly regaining power and water. The historic Post Office and Courthouse in San Juan, which was under construction and renovation, was damaged slightly. The Clemente Ruiz Nazario U.S. Courthouse and the Frederico Degetau Federal Building in Hato Rey were initially closed, not because of damage, but because they were without power. The facilities reopened using emergency electrical generators.

By the time the hurricane had moved across the Florida Keys and into the Gulf States, Georges had been downgraded to a tropical storm, but was still capable of 100 mph winds extending up to 145 miles from the storm center, and of dumping as much as 30 inches of rain from Louisiana to the Florida panhandle. President Clinton declared major disasters or emergencies in Florida, Alabama, Mississippi, and Louisiana and ordered federal aid to supplement state and local recovery efforts in the area struck by Hurricane Georges.

There was substantial water damage on every floor of the new Pensacola, Florida, courthouse in the Northern District of Florida, from water in the fifth floor courtroom ceiling, to a flooded first floor lobby and a collapsed ceiling in the U.S. Marshals Service conference room. Despite this, the court was open almost immediately for business. "We're trying to dry out," said Clerk of Court Robert Mossing, "but we have to take care of our public." The Middle District of Florida had no significant damage. The hurricane closed the Tampa and Fort Myers courthouses briefly in anticipation of severe weather. "We were fortunate," said Clerk of Court Richard Sletten. "We had an October 1 move-in date for the new Tampa courthouse, and I was just hoping we'd come through without any damage." The Southern District of Florida reported no power or water at its Key West office, but otherwise few leaks or damage.

Chief Judge Morey L. Sear (E. D. La.) spent Sunday night before the storm at the New Orleans courthouse, along with several judges, the clerk of court, and other court employees who lived in low-lying areas or in the path of the winds. At 4:00 a.m. Monday morning as he was walking the family dog, Sear was surprised to hear the storm had come and gone. "We had rain three weeks before the hurricane that was far more damaging," said Sear. "We closed the courthouse Monday because that was the day the storm was due to come ashore. And we remained closed Tuesday only because so many people working at the court had evacuated the area."

While televised stories showed knee-high water in the streets of Mobile, Alabama, the water never lapped the U.S. courthouse there. "We had some rain damage in a few of the offices," said Deborah S. Hunt, clerk of court for the Southern District of Alabama. "We were braced for something hideous, but we were very lucky." Not so lucky was the federal defenders' office on the appropriately named Water Street, where first-floor flooding cut off power and telephone service to offices on the upper floors.

ln the Southern District of Mississippi, Clerk of Court J.T. Noblin said the advance warning on Georges gave them time to back-up electronic files and secure computer equipment before the storm hit. Even at less than hurricane strength, Georges's winds were strong enough to move the rooftop air conditioner units at the Biloxi office, and some water damage occurred. Cell phones kept key people in touch until power was restored several days after Georges passed. "It could have been a lot worse," said Noblin. "As it is, when we design our new courthouse, we'll take a good look at storm protection."

An Interview with Philip S. Anderson, ABA President 1998-1999

Philip S. Anderson

Philip S. Anderson is a partner in the Little Rock, Arkansas, law firm of Williams & Anderson. He became American Bar Association president in August 1998.

Q: You began your tenure as ABA President in August. It may be early, but what special initiatives or causes will you pursue in the coming year?

A: I have announced initiatives on the independence of the Judiciary and the independence of the profession. In addition, I have asked the ABA's Litigation Section to undertake a long-term project on racial and gender fairness in our justice system.

In May 1999, the American Bar Association, the Conference of Chief Justices, the Conference of State Court Administrators, and the League of Women Voters will sponsor a national conference on public trust and confidence in our system of justice. We expect the attendance of every state chief justice, public and bar representatives from each state, and other national leaders from business, the media, the bench, and the bar. We will invite the chief judge from every federal circuit to attend. We expect to leave the conference with a national strategy to strengthen public trust and confidence.

In preparation for the national conference, the ABA will sponsor two national symposia. The first is scheduled for December. It will be held in Philadelphia and be co-sponsored by the University of Pennsylvania School of Law. It will examine the origins of our tripartite system of government and why, by the late eighteenth century, the idea of an independent Judiciary had become linked with the notion of liberty. It will also cover the history of efforts by the other branches of our government to encroach on judicial independence. We will look at judicial accountability and judicial discipline. I am pleased that Justices Kennedy and Breyer will participate in the symposium, and that Gerhard Casper, the president of Stanford University, will open the proceedings and lead the initial discussion on separating powers. The second symposium will be held in the District of Columbia in February. We will examine public perceptions of our justice system, how public perceptions are formed and reinforced, and whether we can do a better job of educating the public, beginning with junior and senior high-school students.

Several of the federal circuits and some states commissioned task forces a few years ago to study issues of gender or racial fairness or both. All of the task forces have issued reports with recommendations. I asked the ABA's Section on Litigation to study the recommendations and develop a program for their implementation throughout the state and federal systems. I am pleased that a Fairness Task Force will begin work on this project immediately. This is a long-range project, and we expect long-range and enduring results.

Q: You chaired the ABA's Coalition for Justice from 1994 to 1997. What is the coalition and its importance?

A: The ABA's Coalition for Justice is directed by a broad-based group of national leaders from the public and the profession. It coordinates the ABA's programs with state and local bar associations that are designed to improve access to justice and elevate public awareness about our system of justice. In addition, the coalition seeks partnerships with other national organizations with shared goals. The coalition and the American Association of Retired Persons have co-sponsored a program on the delivery of legal services to persons whose incomes are above the poverty level and who need legal assistance but cannot afford traditional services. The national conference scheduled for next May in co-sponsorship with the League of Women Voters is an outgrowth of the coalition's efforts to forge alliances with national organizations with similar interests.

Q: Political attacks on judges have intensified. How should federal judges respond to unfair criticism? Is the ABA doing anything to mitigate these attacks?

A: Any effort to intimidate federal judges by calling for their impeachment or resignation because of the way that they decide certain cases is not just an attack

on judges, it is an attack on the Constitution. An independent judiciary is essential to a free society. The national conference that I mentioned earlier is an effort to institutionalize a program of public education that will discourage unfair criticism of judges. The ABA has encouraged state and local bar associations to adopt a Model Plan for Response to Criticism of Judges. The plan establishes a protocol for responding to erroneous or inaccurate criticism. Of course, not all criticism of judges warrants a response. Some discussion of judicial decisions is an important aspect of self-government and the lawmaking process. When criticism oversteps the bounds of fairness, the bar has an obligation to the public to set the record straight.

The bar must respond to attacks on judges, because the judges cannot do so. The ABA will continue to emphasize the responsibility of the national bar and the state and local bars in fulfilling this obligation.

Q: The ABA's House of Delegates voted to support the filling of federal judicial vacancies. In the past the ABA has been criticized for its review of judicial nominees. What role should the ABA play in the nomination of judicial candidates?

A: The ABA Standing Committee on Federal Judiciary has evaluated the professional qualifications of prospective nominees to the federal bench for almost half a century. The high quality of the federal bench is due in part to the work of the standing committee, which focuses solely on the professional competence, integrity, and judicial temperament of candidates for appointment. Those are the only qualities considered by the standing committee, and by limiting consideration to those professional qualifications the committee avoids the partisan considerations that often animate the judicial selection process. In addition, the committee has numerous safeguards to ensure that the review of candidates is conducted with the highest degree of probity. It is ironic that the work of the committee has been characterized as political. The role that the ABA plays in the nomination of federal judges is appropriate for an organization that has more than 400,000 members and can speak with confidence on behalf of the legal profession in America. It has a broad, non-partisan view. The ABA provides an important service to the Judiciary and to our citizens, and this assessment has been shared by most Administrations since the process was implemented by President Eisenhower.

Q: You've also had some experience in the judicial nominations process, serving on the U.S. Circuit Court Judge Nominating Commission Panel for the 8th Circuit. Are there any recommendations that you'd draw from that experience that would apply to the judicial nominations process?

A: I am proud of the lists of candidates that our panel submitted to the President, and prouder still of the records of the judges on the Eighth Circuit who were selected from those lists. An objective assessment of the experience would have to be that the selection of candidates for federal judges, just as the selection of federal judges, is a political exercise. The nominating commission model adds one more political layer to the process. For those senators who want that protection, the nominating commission is a satisfactory way of achieving it. At bottom, however, the selection of the judge is ultimately up to the senators. I think that the best way is to leave it up to the senators in the first place. The splendid judges who were selected from the lists that our commission submitted would have been selected without the intervention of the nominating commission. From purely a personal standpoint, I learned much from the process and developed friendships that last until this day.

Q: As we near the year 2000, what changes do you anticipate—or would you like to see—in the practice of federal civil and criminal law?

A: I anticipate changes in the way that legal services are delivered to clients. Financial services firms, accounting firms and other corporate entities that do not fit the traditional mold of law firms will attempt to offer services that resemble legal services. I am concerned that new entities offering legal services will not be interested in providing legal services to the poor on a pro bono basis. I am concerned that the new entities will not protect client confidences, and that clients will not be shielded from the vices of conflicts of interest. I am concerned that the new entities will not be sufficiently independent to protect the Judiciary and to sue for reform against a government that may tend to be suffocating in its efforts to advance the interests of the majority that elected it. What would I like to see? I would like to see a sustained, robust debate about the virtues of our republic and why it has endured and the promises that it has for humankind. I would like to see a continuation of an independent profession that provides stability to the fabric of our society and to the institutions of our government. And I would like to see the preservation of the core values of our profession by lawyers wherever they employ their legal training.

Judicial Conference of the United States, September 15, 1998

Seated: *(LtoR) Chief Judge Juan R. Torruella (1st Cir.); Chief Judge Ralph K. Winter, Jr. (2nd Cir.); Chief Judge Edward R. Becker (3rd Cir.); Chief Judge J. Harvie Wilkinson III (4th Cir.); Chief Justice William H. Rehnquist; Chief Judge Henry A. Politz (5th Cir.); Chief Judge Boyce F. Martin, Jr. (6th Cir.); Chief Judge Richard A. Posner (7th Cir.); Chief Judge Pasco M. Bowman II (8th Cir.).*

Standing, Second Row: *Judge Joseph A. DiClerico, Jr. (D. N.H.); Judge Peter C. Dorsey, (D. Conn.); Judge Donald E. Ziegler (W.D. Pa.); Chief Judge Haldane Robert Mayer (Fed. Cir.); Chief Judge Procter R. Hug, Jr. (9th Cir.); Chief Judge Joseph W. Hatchett (11th Cir.); Chief Judge Harry T. Edwards (D.C. Cir.); Chief Judge Stephanie K. Seymour (10th Cir.); Chief Judge Charles H. Haden II (S.D. W.Va.); Judge Robert L. Miller, Jr. (N.D. Ind.).*

Standing, Third Row: *Chief Judge William H. Barbour, Jr. (S.D. Miss.); Judge Thomas A. Wiseman, Jr. (M.D. Tenn.); Judge Lloyd D. George (D. Nev.); Judge Ralph G. Thompson (W.D. Okla.); Judge James M. Rosenbaum (D. Minn.); Judge Wm. Terrell Hodges (M.D. Fla.); Chief Judge Norma H. Johnson (D. D.C.); Chief Judge Gregory W. Carman (Ct. Int'l Trade); Leonidas Ralph Mecham, Director, AO.*

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THE THIRD BRANCH

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Omnibus Appropriations Bill A Mixed Bag For Judiciary

Judiciary Funded, But Not Without Limitations

The Judiciary received its fiscal year 1999 funding when Congress passed the omnibus appropriations bill, but it came with a string attached. The string in this case was a provision cutting off funding on June 15 for all agencies in the Commerce, Justice, and State, the Judiciary and Related Agencies portion of the bill. The limitation is a compromise between congressional leaders and the White House on a census sampling debate that holds the agencies hostage to future resolution on the conduct of the year 2000 census. Representative Harold Rogers (R-KY), chair of the House Appropriations Subcommittee on Commerce, Justice, and State, the Judiciary and Related Agencies, stated during debate on the bill in the House that the limitation is "a serious mistake."

Earlier in the session, controversy over statistical sampling for the upcoming census held up passage of the Commerce, Justice, State and the Judiciary appropriations bill. By including the June 15 limitation in the

*See **Budget** on page 5*

Omnibus Bill Funds Courthouses in 1999

Construction on 13 new or expanded courthouses will proceed in fiscal year 1999, thanks to $460 million authorized and appropriated by Congress in the omnibus appropriations bill. The FY99 Treasury and General Government Appropriations Act originally contained funds for the projects but this bill ultimately was folded into the omnibus bill. Congress also provided $25 million for six major repair and alteration projects, and approved additional funding to complete site acquisition and design of the Orlando, Florida, project and renovation of the Milwaukee, Wisconsin, courthouse.

The White House did not include funds for new courthouses in either the FY99 or the FY98 budget request. The Office of Management and Budget (OMB) withdrew the General Services Administration's funding request before the 1999 budget was transmitted to Congress. As a consequence, every effort was made by the Judiciary to present its case to Congress for the courthouses,

*See **Courthouses** on page 7*

Boston Courthouse Opens

see page 8

At the festivities marking the opening of the Boston courthouse were (from left) Chief Judge Juan R. Torruella (1st Cir.), Chief Judge Joseph L. Tauro (D. Mass.), Senator Ted Kennedy (D-MA), Judge Douglas P. Woodlock (D. Mass.), and Supreme Court Justice Stephen Breyer.

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End of the 105th Congress Resolves Legislative Action

The second session of the 105th Congress finally ended October 21, well past the planned October 9 deadline for adjournment that was prolonged by negotiations over appropriations. And what a session it was for the Judiciary. There was finger-pointing over the pace of judicial nominations and confirmations, castigation of purported judicial activists on the floor of Congress, and the introduction of bills and amendments in both Houses on issues from prisoner release orders to judges' travel. In the end, 65 judges were confirmed in the second session, and most of the introduced bills affecting the Judiciary failed to pass both Houses.

Among the bills that failed in the 105th Congress were the so-called "judicial activism" bills, the Judicial Reform Act of 1997, **H.R. 1252,** and the Senate bill **S. 2163**, the Judicial Improvement Act of 1998. The multi-part bills included proposals to provide that a three-judge court hear challenges to state referenda and Acts of Congress, to allow peremptory challenges of judges in civil cases, and to transfer for resolution complaints for judicial misconduct to a circuit other than one in which the complained-against judge sits. A law and order amendment added to the House-passed bill would have placed limitations on prisoner release orders and terminated any existing consent decrees providing for remedies relating to prison conditions. Judicial Conference representatives testified in opposition to most parts of the House bill. There were no hearings on the Senate bill.

The Federal Courts Improvement Act, **H.R. 2294**, which contained many provisions to facilitate the operation of the Judiciary was passed by the House. Senator Charles Grassley (R-IA) introduced his own version, **S. 2516**, which was passed by the Judiciary Committee with an amendment requiring Article III judges to report annually to Congress on all travel not directly case-related. The amendment is unacceptable to the Judicial Conference. Grassley insisted on the inclusion of this amendment as a condition of the bill moving forward. As a consequence, S. 2516 did not come to a vote in the Senate.

S. J. Res. 44 and **H.J. Res. 71**, bills proposing a victims' rights constitutional amendment were introduced in the 105th Congress, as were **S. 1081** and **H.R. 1322**, bills proposing a statutory alternative to the victims' rights amendment. The Judicial Conference took no position on the enactment of a constitutional amendment, but did express its strong preference for a statutory approach. None of these bills passed, but it is expected that supporters will introduce legislation again in the 106th Congress.

Comprehensive crime bills, including the juvenile crime bills **S. 10** and **H.R. 3**, failed to move forward in this Congress, although last-minute attempts were made to conference the House and Senate juvenile justice bills. The juvenile crime bills, in particular, would have brought normally state-prosecuted defendants into the federal courts, some as young as 14 years of age. The Judicial Conference's long-standing position is that federal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts, and this particularly applies to juvenile crime.

For the same reason, the Conference voiced concerns over the Hate Crimes Prevention Act of 1998, **S. 1529**, and **H.R. 3081**, a similar bill introduced in the House. Although public support for the bills was generated in the wake of two notorious murders, neither bill was enacted.

Provisions similar to the House-passed **H.R. 1534**, the Private Property Rights Implementation Act of 1997, and **H.R. 992**, the Tucker Act Shuffle Relief Act, were combined by the Senate

Legislative Scorecard

Failed

H.R. 1252, Judicial Reform Act

S. 2163, the Judicial Improvement Act

H.R. 2294 and **S. 2516**, the Federal Courts Improvement Acts

S. J. Res. 44 and **H.J. Res. 71**, bills proposing a constitutional amendment to protect victims' rights

S. 1081 and **H.R. 1322**, bills proposing a statutory alternative to the victims' rights amendment

S. 10 and **H.R. 3**, juvenile crime bills

S. 1529, and **H.R. 3081**, Hate Crimes Prevention Acts

H.R. 1534, the Private Property Rights Implementation Act

H.R. 992, the Tucker Act Shuffle Relief Act

S. 2271, Property Rights Implementation Act of 1998

H.R. 1544, **S. 1166**, Federal Agency Compliance Acts

S. 678, Federal Judgeship Act of 1997

H.R. 1596, the Bankruptcy Judgeship Act

Passed

H.R. 3528, the Alternative Dispute Resolution Act of 1998

S. 1021, the Veterans Employment Opportunities Act of 1997

H.R. 3396, the Citizens Protection Act of 1998, (included in the omnibus appropriations bill

S. 1892, a bill barring a person closely related to an Article III judge from serving on the same court

H.R. 3898 and **S. 2024**, enhancing methamphetamine mandatory minimum sentences (included in the omnibus appropriations bill)

S. 191, to throttle criminal use of guns

nto a different version of H.R. 1534, as **S. 2271**, but the bill never came o a Senate vote. The Judicial Conference had expressed concerns about both bills. H.R. 1534 was ntended to expedite access to ederal courts in property rights laims, and H.R. 992 would have ffected the jurisdiction of the Court of Federal Claims, as well as the district courts, in Fifth Amendment akings cases.

The House and Senate passed eparate bankruptcy reform legislaion, and a conferenced version of he bill was passed by the House, but ecause of a filibuster threat over everal provisions and with a hreatened White House veto ooming, the bill never came to a ote in the Senate. This also ended ny hopes for the additional bankuptcy judgeships that the legislation ould have created.

The Judicial Conference supported a bill, **H.R. 1544**, the Federal Agency Compliance Act, which would have prohibited federal agencies from adopting a policy of non-acquiescence to, and re-litigation of, the precedent established in a particular federal circuit. H.R. 1544 passed the House; however, a companion bill, **S. 1166**, introduced in the Senate, was not reported out of committee. Recommendation 11 of the Judiciary's *Long Range Plan for the Federal Courts* was the impetus for this legislation.

Nominations and Confirmations

In the second session of the 105th Congress, 65 nominees for federal judgeships were confirmed by the Senate. When Congress adjourned there were still 21 nominees pending and 50 judicial vacancies. At the end of a Congress, all pending nominations are returned to the White House.

In the first session of the 105th Congress, the pace of nominations and confirmations had slowed to the point where the Chief Justice, in his 1997 Year-End Report on the Judiciary, urged the President to nominate candidates "with reasonable promptness" and the Senate to act "within a reasonable time to confirm or reject them." A *Washington Post* editorial called the 65 nominees confirmed in 1998 a "marked improvement . . . in the judicial nominations process," observing that both the President and the Senate had apparently heeded the Chief Justice's call.

Bills To Be Signed Into Law

A number of bills on alternative dispute resolution (ADR) circulated in the 105th Congress. **H.R. 3528**, the Alternative Dispute Resolution Act of 1998, passed the House and Senate. The President is expected to sign the bill, which requires every judicial district to have some type of ADR program, but does not require judges to make any litigant participate. The Conference supports the use of ADR by district courts and did not oppose the bill.

Congress passed **S. 1021**, the Veterans Employment Opportunities Act of 1997, a bill that initially would have required the Judicial Conference to promulgate judicial branch regulations providing a preference to certain veterans in appointment and in reductions in

See ***Congress*** *on page 4*

Judgeships

Congress failed to act on the Judicial Conference request for 12 permanent and five temporary courts of appeals judgeship positions, 24 permanent district judgeship positions, and 12 temporary district court positions. A judgeship bill, **S. 678**, was introduced in the Senate in the first session of the 105th Congress. Senator Charles E. Grassley (R-IA) subsequently requested that the General Accounting Office review the basis upon which the Judicial Conference made its request for Article III and bankruptcy judgeships. The Senate Judiciary Subcommittee on Administrative Oversight and the Courts, chaired by Grassley, also held hearings during this Congress on judicial vacancies. Judges from all circuits except the Ninth Circuit were asked to testify on the need for new judgeships and the use of current resources.

The failure to pass bankruptcy reform bills in this Congress also ended hopes for the bankruptcy judgeships provided for by the legislation. Based upon the high growth in bankruptcy caseloads in certain judicial districts, the Judicial Conference had requested the creation of seven permanent and 11 temporary bankruptcy judgeships. The House passed **H.R. 1596**, the Bankruptcy Judgeship Act of 1997, which would have created the 18 bankruptcy judgeships and extended a temporary judgeship in the District of Delaware. Instead of approving that bill, Grassley introduced **S. 1301**, the Senate's controversial Consumer Bankruptcy Reform Act of 1998, which also would have created 18 temporary bankruptcy judgeships and extended the terms of five existing temporary bankruptcy judgeships. Neither bill passed both houses.

Congress continued from page 3

force. The final bill, which the President is expected to sign, continues to require the Conference to promulgate such regulations but will only affect certain employee levels in the Administrative Office, the Federal Judicial Center, and the U.S. Sentencing Commission.

Provisions of **H.R. 3396**, the Citizens Protection Act of 1998, were included in the Commerce, Justice, State, the Judiciary appropriations bill, which was signed by the President as the omnibus appropriations package. The provisions provide that government attorneys are subject to state laws and rules and local federal court rules.

The President also is expected to sign **S. 1892**, a bill barring a person closely related to an Article lIl judge from serving on the same court. The bill is related to the nomination of William A. Fletcher, whose mother sits on the Ninth Circuit, and who had been nominated to fill a judgeship vacancy in the Ninth Circuit. Upon his confirmation, which had been delayed for more than three years, Judge Betty Fletcher had announced she would take senior status. S. 1892 would be applicable to future nominees, not Fletcher. The Fletcher nomination was confirmed by the Senate on October 8, 1998.

The omnibus appropriations act also included enhanced methamphetamine mandatory minimum sentences. This provision will equalize the punishments for crack and methamphetamine possession by increasing the penalties for methamphetamine.

Congress also passed **S. 191**, which enhances penalties for using a firearm during a drug trafficking offense or crime of violence. S. 191 dramatically increases the firearms mandatory minimums contained in 18 U.S.C. § 924 (c).

Sentencing Commission Loses Ability to Act

With the adjournment of Congress and the resignation, on October 31, 1998, of commission chair Judge Richard P. Conaboy, the U.S. Sentencing Commission was a seven-member commission without commissioners. The commission already had four vacancies, and three members with expired terms could serve only until Congress adjourned. Congress did not confirm or reappoint any commissioners before ending the 105th Congress, reportedly because the White House and key senators failed to agree on candidates. Some of the commission's work—studies, research, training and legal analysis—will continue, but the sentencing guidelines may not be amended nor conflicts resolved in interpretation of the guidelines without a quorum of four commissioners.

Third "Just the Beginning" Foundation Celebration Held in Detroit

The third "Just The Beginning" Foundation (JTBF) Celebration was held in September in Detroit. Judge Damon J. Keith (6th Cir.) chaired the event attended by more than 300 African American federal prosecutors, and circuit, district, magistrate and bankruptcy judges. Among its missions, the non-profit foundation commemorates the contributions of African Americans to the federal Judiciary and educates the public on the struggles and successes of African American lawyers and judges. This year's gathering was co-sponsored by the Damon J. Keith Law Collection of African American Legal History at Wayne State University, Detroit.

udget continued from page 1

mnibus appropriations bill, both
ıe White House and congressional
aders are gambling that the
upreme Court will rule by that
ate on census sampling litigation.
heir plan is to enact legislation,
llowing the ruling, to remove the
mitation. Unfortunately, if either
de is unhappy with the Supreme
ourt's decision or with the pro-
osed legislation, it could delay
bligation of the remaining 3½
onths of appropriations, precipitat-
g a shutdown of the agencies.
Said Rogers, "All of the programs
this bill, such as the Supreme
ourt, the rest of the federal courts,
e Department of Justice, the FBI,
e INS, the DEA, the State Depart-
ent embassies abroad, and loans to
nall businesses, could be shut
own over a political dispute
etween Congress and the adminis-
ation over how to conduct the
nsus. I cannot believe the adminis-
ation insisted on this provision,
ıd I cannot believe that the admin-
ration wants to hold open the
ossibility of shutting down these
tal functions of government as
verage for its position on the
nsus, that has been rejected by two
strict courts."

Every effort will be made to avoid any type of disruption to court operations, including seeking legislation from Congress in the spring to exclude the judicial branch from this funding limitation.

The omnibus appropriations bill provides total FY99 obligations of $4.06 billion for the Judiciary. This is a 6 percent increase over the FY98 financial plans, but less than the 8.4 percent increase the Judiciary had requested. Of this, $3.22 billion is provided for salaries and expenses of the courts of appeals, district courts and other judicial services. While the funding does not allow for staffing increases on a national level, the salaries and expenses financial plan does establish a reserve allowing those court units facing significant workload increases to request additional staff. The Defender Services account is provided an obligational level of $395.71 million. The Fees of Jurors account is provided $69.38 million, and Court Security is provided $178.52 million.

The Judiciary was pleased that the omnibus bill did not include several provisions it opposed in the House and Senate Commerce, Justice, State and the Judiciary appropriations bills. The omnibus bill dropped the Senate report's requirement for a 25 percent reduction in judges' travel and chambers staffing and a courtroom sharing study. The bill also no longer includes an amendment capping payments to panel attorneys at the pay level of U.S. attorneys. Finally, the bill removed provisions requiring the Judiciary to pay for the costs of special masters overseeing prison condition cases and to consider a rule change to allow counsel to accompany witnesses during grand jury proceedings.

Unfortunately, the omnibus bill did not include certain other provisions having to do with pay. The general provision inserted in the Senate bill by Chairman Judd Gregg (R-NH), providing judges with a cost-of-living adjustment in FY99, was dropped from the omnibus bill. The Treasury portion of the omnibus bill also included a provision denying a COLA for members of Congress, judges, and executive schedule employees. In addition, the omnibus bill again denies the Judiciary's request to give panel attorneys a $5 per hour rate increase. The Judiciary is required to report to Congress on several aspects of the cost of defender services as well, particularly regarding capital and capital habeas cases.

FY 1998/1999 Funding Summary

Courts of Appeals, District Courts and Other Judicial Services
(Total obligations in thousands of dollars)

ACCOUNT	FY 1998	FY 1999		FY 1998 TO FY 1999	
		Revised	Conference	Amount	Percent
Salaries and Expenses	$3,047,820	$3,294,409	$3,221,478	$173,658	5.7%
Defender Services	362,867	409,591	395,713	32,846	9.1%
Fees of Jurors	67,903	69,379	69,379	1,476	2.2%
Court Security	167,891	179,703	178,520	10,629	6.3%
TOTAL OBLIGATIONS	$3,646,481	$3,953,082	$3,865,090	$218,609	6.0%

JUDICIAL MILESTONES

Appointed: Carl J. Barbier, as U.S. District Judge for the Eastern District of Louisiana, October 12.

Appointed: Gerald Bruce Lee, as U.S. District Judge for the Eastern District of Virginia, October 9.

Appointed: Gregory M. Sleet, as U.S. District Judge for the District of Delaware, September 23.

Appointed: Lawrence O. Anderson, as U.S. Magistrate Judge for the District of Arizona, September 23.

Appointed: Thomas M. DiGirolamo, as U.S. Magistrate Judge for the District of Maryland, September 18.

Appointed: David L. Martin, as U.S. Magistrate Judge for the District of Rhode Island, September 29.

Elevated: Judge Henry R. Wilhoit, Jr., to Chief Judge, U.S. District Court for the Eastern District of Kentucky, succeeding Judge William O. Bertelsman, September 20.

Elevated: Bankruptcy Judge Rosemary Gambardella, to Chief Judge, U.S. Bankruptcy Court for the District of New Jersey, succeeding Bankruptcy Judge William H. Gindin, August 12.

Elevated: Bankruptcy Judge Susan Pierson Sonderby, to Chief Judge, U.S. Bankruptcy Court for the Northern District of Illinois, succeeding Bankruptcy Judge John D. Schwartz, July 20.

Retired: Judge John G. Davies, U.S. District Court for the Central District of California, July 18.

Retired: Magistrate Judge William L. Harper, U.S. District Court for the Northern District of Georgia, September 30.

Deceased: Judge John D. Kelly, U.S. Court of Appeals for the Eighth Circuit, October 21.

Deceased: Senior Judge David S. Nelson, U.S. District Court for the District of Massachusetts, October 21.

Deceased: Senior Court of Appeals Judge Spottswood W. Robinson, III, U.S. Court of Appeals for the District of Columbia, October 11.

Deceased: Senior Court of Appeals Judge Collins J. Seitz, U. S. Court of Appeals for the Third Circuit, October 16.

Director's Awards Nominations Sought

Nominations for the 1999 Director's Awards for Excellence in Court Operations and the Director's Award in Outstanding Leadership now are being accepted. Nomination forms will be sent to all payroll certifying officers for distribution to employees. Nominations must be received by the Administrative Office Human Resources Division by January 11, 1999.

The Director's Award for Excellence in Court Operations honors employees whose efforts have improved the daily function of the courts. The Director's Award for Outstanding Leadership recognizes managerial employees who have made long-term contributions to the administration of the federal Judiciary.

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JUDICIAL BOXSCORE

As of November 1, 1998

Courts of Appeals	
Vacancies	15
Nominees	0
District Courts	
Vacancies	35
Nominees	0
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	21

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VACANCY ANNOUNCEMENTS
THE THIRD BRANCH

Vol. 30 Number 11 November 1998

FEDERAL PUBLIC DEFENDER, Iowa

The U.S. Court of Appeals for the Eighth Circuit is accepting applications from all qualified persons for the position of Federal Public Defender for Iowa. The Federal Defender will be located in either the Des Moines or Cedar Rapids office, with branch offices in Sioux City and Davenport. Travel to the branch offices on a monthly basis is required. Term of appointment: four years. Salary: not to exceed the salary of the U.S. Attorney for the district, currently $118,700. The Federal Public Defender provides federal criminal defense services to individuals unable to afford counsel. An applicant must be/have (1) admitted to practice before the highest court of at least one state; (2) a member in good standing of every other state bar of which he/she is a member; (3) a minimum of five years' criminal practice, preferably with significant criminal trial experience; (4) administrative expertise; (5) a reputation for integrity; and (6) a commitment to the representation of those unable to afford counsel. Application forms are available at the offices of the district court clerk in Des Moines, Davenport, Council Bluffs, Cedar Rapids, and Sioux City, Iowa, and in the Office of the Circuit Executive. Please forward four copies of the completed application to the Office of the Circuit Executive, 1114 Market Street, Suite 611, St. Louis, MO 63101. **Application deadline: prior to December 31, 1998.**

STAFF ATTORNEY, Seventh Circuit

The U.S. Court of Appeals for the Seventh Circuit invites applications for the position of staff attorney with its central legal staff in Chicago. Staff attorneys work directly with the judges of the court, assisting them in the research and disposition of appeals. Appointments are for two years and start in September 1999. Applicants must have excellent academic credentials and possess superior analytical, research, and writing skills. Salary range: CL 27/25 – CL 30/25 ($39,981 - $67,335). To apply, send a resume, law school transcripts, two unedited writing samples, and at least two letters of recommendation to Julie A. Fenton, Senior Staff Attorney, U.S. Court of Appeals for the Seventh Circuit, 219 S. Dearborn Street, Chicago, IL 60604. Fax: 312/554-8069. Or julie_fenton@ca7.uscourts.gov. **Application deadline: Open until positions filled.**

CHIEF DEPUTY CLERK, BANKRUPTCY COURT, Eastern District of Missouri, St. Louis

The U.S. Bankruptcy Court for the Eastern District of Missouri is seeking applicants for the position of Chief Deputy Clerk. Salary: JSP 13-15 ($55,155 - $99671). Required: Bachelor's or master's degree in public or business administration or related field or a law degree; a minimum of 5 years of progressively responsible administrative, technical, or managerial experience. Specialized experience in federal, state, county, or municipal courts preferred. Candidates must have a performance history demonstrating strong organizational, prioritizing and problem-solving skills, and solid oral and written communication skills. Candidates must possess a comprehensive understanding of modern management techniques. Submit cover letter with resume and salary history to Dana C. McWay, Clerk of Court, U.S. Bankruptcy Court, Eastern District of Missouri, 211 N. Broadway, 7th Floor, St. Louis, MO 63102-2734. **Application deadline: December 31, 1998.**

CALENDAR DATES FOR
THE THIRD BRANCH

Vol. 30 Number 11 November 1998

DECEMBER

1-2 **Tuesday-Wednesday**
Committee on International Judicial Relations

1-2 **Tuesday-Wednesday**
Committee on Criminal Law

1-4 **Tuesday-Friday**
Orientation for Newly Appointed Bankruptcy Judges

2-3 **Wednesday-Thursday**
Committee on Judicial Resources

2-4 **Wednesday-Friday**
Committee on Security and Facilities

2-4 **Wednesday-Friday**
Committee on Court Administration and Case Management

7-8 **Monday-Tuesday**
Committee on Administration of the Magistrate Judges System

7-8 **Monday-Tuesday**
Committee on the Judicial Branch

10-11 **Thursday-Friday**
Committee on Defender Services

10-11 **Thursday-Friday**
Committee on the Administrative Office

JANUARY

5-7 **Tuesday-Thursday**
Committee on Automation and Technology

7-8 **Thursday-Friday**
Committee on Federal-State Jurisdiction

7-8 **Thursday-Friday**
Committee on Rules of Practice and Procedure

7-8 **Thursday-Friday**
Committee on the Administration of the Bankruptcy System

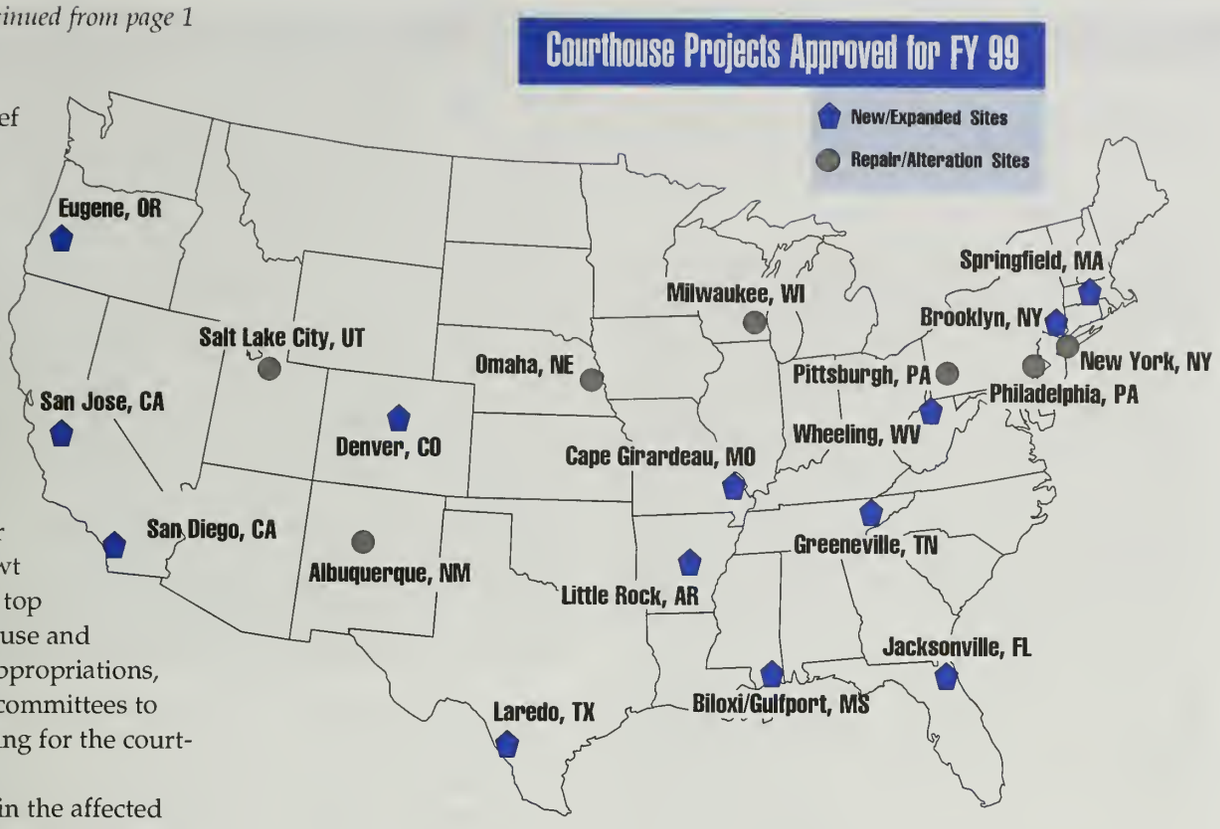
11-12 **Monday-Tuesday**
Committee on Financial Disclosure

14-16 **Thursday-Saturday**
Committee on Codes of Conduct

15-16 **Friday-Saturday**
Committee on the Budget

25-29 **Monday-Friday**
Orientation for Newly Appointed District Judges

Courthouses continued from page 1



including an appeal from Chief Justice William H. Rehnquist to Senate and House leaders for courthouse funds. Administrative Office Director Leonidas Ralph Mecham also wrote to and met with Speaker of the House Newt Gingrich and the top leaders of the House and Senate budget, appropriations, and authorizing committees to request full funding for the courthouses.

Judges sitting in the affected districts contacted their senators and representatives and Judge Norman H. Stahl (1st Cir.), chair of the Judicial Conference Committee on Security and Facilities, met with committee leaders and also testified in hearings before House and Senate committees. These efforts, combined with those of AO staff, successfully pushed home the need for the courthouses. Funds for every requested courthouse project were approved, with the exception of Savannah, Georgia, which is under further study.

Biennial Questionnaire Asks Judges to Name Preferences

The 1999 biennial Judicial Conference Committee Appointments Questionnaire will be mailed shortly to all federal judges, who will have an opportunity to make known their current preferences for appointment to one of the 24 Judicial Conference committees. Since September 1987, these biennial questionnaires have been used to create a new database every two years reflecting the interests of judges in serving on Conference committees. "Knowing where judges want to serve and that they are available for an appointment makes our job much easier," said AO Director Leonidas Ralph Mecham, who assists the Chief Justice in filling vacancies.

The Judicial Conference, the Judiciary's policy-making body, depends on its committees to study and develop recommendations on substantive issues affecting the administration of the federal courts. Committee service provides judges an opportunity to play a key role in this process. "Judges who have not been appointed, despite having completed questionnaires in the past, should not be discouraged," said Mecham. "This database is referenced over and again during the two-year period between surveys to identify judges to fill unexpected committee vacancies and vacancies on other entities for which the Chief Justice is the appointing authority (such as the Judicial Panel on Multidistrict Litigation), or to serve on an occasional special or ad hoc committee. According to those who have served in the past, the opportunity to serve is worth the wait."

Committee appointments rotate on October 1st each year, and terms are usually three years in duration, with one reappointment possible. Appointments and reappointments depend upon, among other things, judges being current in their judicial work. The Chief Justice retains all appointment authority and exercises full discretion in determining who will serve and for how long.

The Courthouse as a Center of Civic Life

TTB interviewed Judge Sandra L. Lynch (1st Cir.) and Judge Douglas P. Woodlock (D. Mass.) on the opening of the Boston, Massachusetts, courthouse.

Q: What were your roles in the planning and construction of the new Boston courthouse?

Woodlock: I have been involved since 1987 when GSA did a study to see whether or not the old Boston courthouse could be renovated to serve the needs of the courts. When that building was built there were three resident federal judges in Boston. At the time GSA did the study, there were about 20 resident federal judges in Boston, and the courthouse was literally bursting at the seams. The GSA study was characteristically inconclusive, but the House Appropriations Committee authorized a separate study by the Administrative Office concerning the Boston situation and that study was clearer. There was no way the old building could be renovated or restored to serve the purpose of the courts. I became irretrievably involved at that point, an involvement that has continued from the appropriations process all the way through completion of construction, as a representative of the Massachusetts district court.

Lynch: This courthouse is the home of the District Court of Massachusetts as well as the central home of the First Circuit. So throughout the process there has been a representative from both courts. The representative of the First Circuit initially was Chief Judge Levin H. Campbell, and then after Judge Stephen Breyer became Chief Judge, Judge Breyer was involved through 1994, when he went on to the Supreme Court.

When I came on the court, replacing Judge Breyer, I was involved, particularly in the construction and programming phase of the future courthouse. It seemed to me that we could do more with the Community Outreach Program.

Q: Generally, what message should the architecture of a federal courthouse send its community? What did you tell the architect, Harry Cobb, when you first sat down with him?

Woodlock: At the outset Harry Cobb told us that "the courthouse should convey in every aspect of its design those qualities—probity, permanence, clarity and restraint—that are embodied in the administration of justice." To develop those principles, we began a series of extended conversations with the architect in 1991 on what courts do generally and what the federal courts do specifically. There were two additional basic propositions that we thought were fundamental. First, is the sense that the courts are open and accessible to everyone. The second is that the courts are engaged, on a day-to-day basis, in attempting to craft judgments that reflect the highest aspirations of the profession, and the building should reflect that sensibility.

One thing that we didn't do is prescribe some particular official style. We thought the process of designing the courthouse should grow out of these conversations.

The architect embodied these principles, in one way, through a huge picture window that looks out on the city of Boston and the harbor, but also lets the city look back into the courthouse. Symbolically it illustrates the openness of the courts, the sense that this public institution can at the same time be observed by and serve the public.

The craftsmanship involved in this building exists at a variety of levels, but perhaps the most basic one is in the masonry. This is a building made out of brick; the masons were encouraged, in fact challenged, to provide the highest quality of workmanship. They used the most common of materials to illustrate brick-by-brick the craftsmanship that ought to be expressed by the work of the courts themselves. We felt strongly that the courts depend for their authority on persuasiveness, accordingly the building was designed to be a medium to express the sense that we are doing our work, open to the public in a craftsman-like way.

Lynch: I have a latecomers' perspective because I was not involved in the design. But I have observed how the design interacts with the messages the building sends to our commu-

Left: To maximize the benefit to the public of its prime location, the courthouse leaves more than half of its 4.5-acre site for public space.

Below: Shaped by the slope of the 394-foot glass conoid, the Great Hall is an indoor extension of the Harborpark it overlooks.

nity, in addition to the sheer utility of the building as a courthouse.

It is a building designed to be an important public building, to demonstrate the respect that our society has for the Rule of Law. It is a building of some dignity, without grandeur or pretense. It is a building that affords dignity to jurors, in the performance of their role. The jury rooms here are windowed rooms. The juror assembly lounge is a beautiful room that looks out through the eight-story glass wall. There is a sense of respect that the building conveys for the participants.

It is a very efficient and economical building. It was built within budget and at a moderate per-square-foot cost within this area for such a complex building.

It is a safe building, far safer than our old courthouse. That is accomplished largely by having three separate circulation patterns, one for prisoners; one for jurors, operations and judges' chambers; and one for the public. These patterns do not intersect. In the old courthouse they intersected all of the time and caused security problems. Here, people feel safer, and they are safer.

This is a building that is meant to be a center of civic life. It is more than a courthouse; it provides a vehicle to educate the public about the role of law and the Rule of Law. It was designed with spaces that could be used by the public and for educational functions.

Q: Security is, of course, a concern. What measures can be taken to ensure security along with public accessibility to the courthouse? How do you build a courthouse that doesn't look like a fortress?

Woodlock: It is hard to conceive of any building in an urban area that isn't to some degree vulnerable, but they ought not to look vulnerable, and they shouldn't appear to be fortresses. We took a whole series of steps to "harden" the building, to incorporate into the structure various kinds of security appropriate to the special needs of the building. At the same time we sought to avoid the appearance that terrorist groups had set the agenda for the design of public spaces. For example, we have this huge picture window that looks out to the water. Yet, it is set back quite a way from the street. The whole idea is to make it secure, and not let people feel that it is fortress. We did that through a strong street wall that's made out of brick, and by putting most of the glass in a part of the building that's not immediately accessible from the street.

Lynch: The Boston courthouse shows that you can build a courthouse without making it look like a fortress. I'd like to talk about why that is important. Courthouses ought to look like the place people receive justice. The symbolic value of this building is that it communicates the principles of American law rather than the principles of oppression. This building conveys all of the appropriate messages for a democracy. It is possible to do that and still build a secure building.

*See **Interview** on page 10*

Interview continued from page 9

Q: How does a federal courthouse integrate itself into its community?

Lynch: I will only speak about the choices made in Boston. Our courthouse is located in a very important area of this city, and it was inconceivable to the city, to the state, and to the judges that the building would not serve in some sense as an important civic building, open to the public. So we made commitments to the community that to the extent consistent with judicial use of the building, security, and funding, the building would be open to public use.

GSA, the landlord of the building itself, hired the professional managers who in turn hired a full-time staff person as a courts and community program coordinator. Her job is to see to the scheduling of events in the building, and to help pull the public into the building. For example, we are having a children's theater production next weekend at a time when the court doesn't sit, and the courthouse would normally be closed. The children's theater group wants to craft some special theatrical programs around the theme of justice and the court system to explain that to kids.

We also turned to the Bar for assistance with our idea that this building should be used as a vehicle to educate the public about the role of the courts and the rule of law in a democratic society. The Boston Bar Association raised several hundred thousand dollars to hire a full-time staff coordinator to work on this use of the courthouse to educate the public. As a result we were able to have a community open house on the day after the courthouse's grand opening ceremony. On that Saturday, the courthouse had between four and five thousand people go through it. They brought their children up to the courtrooms where there were judges and volunteer lawyers arguing some of the great cases. You heard people asking questions about their constitutional rights, and about how the court system operated. One of the judges ran a courtroom for kids, and the kids came in and they sat in the jury box and they asked questions about what it meant to be a juror. They tried on a judge's robe, they sat at a table and they drew drawings of what justice meant to them. We would like, through the Boston Bar Association program, to bring most of the area school children through this building to provide them with a basic civics education on the role of the Third Branch of government. The Boston public schools are very receptive to this idea, and we hope that students will learn that the courts are an important part of a democratic government.

Woodlock: It is very much in the best interest of the Judiciary to attempt to tell our story in a way that is consistent with our mission. We are introducing school children to what has become the least understood branch of government. Working through the Boston Bar Association, and with the Children's Museum, which is only a block away, and with a variety of other programs, we have tried to embark on that educational program. It is good for the general public, but it is also good for the Judiciary at a time when the Judiciary is under attack and the independence of the Judiciary is subject to harangue. It is important that the public develop a sense of what the Judiciary does. Once they have that understanding, they will become the most active supporters of the idea of an independent and properly regarded judicial branch of government.

Lynch: There has been much concern expressed about the public not understanding the role of the courts. A former president of the American Bar Association reported to the workshop of all of the judges in the First Circuit last week that there has not been a mandatory civics education program in this country for the last 15 years. The superintendent of the Boston public schools reports to us that he considers the mandated state social studies curriculum to be deficient in basic civics education. The type of education about the role of courts in a democracy, which we assume is there, is in fact not there, and so I think it is important judges participate in these efforts. When we had this workshop a Bar president said to us that the use of this building for these educational purposes was one of the most important things the judges could do to restore a sense of respect for this branch of government.

We are building a constituency for the courts in the bar and in the public, and we are helping with a basic understanding in the role of the courts in a democracy. Much of the debate

about cameras in the courtroom has centered around the need to educate the public about what the courts do. We have decided in Boston that there are other methods of educating and getting that message out, and that's what we have been engaged in with the Bar association.

Woodlock: From a construction and a use-of-building point of view, this really doesn't cost anything at all. We are making use of spaces that otherwise would be unused in the building for large periods of time. Of course the courts must be able to do their business, and nothing can interfere with that, but you should recognize that federal courthouses generally have what they call a 66 percent or so efficiency ratio, which means 33 percent of the space is circulation space or otherwise non-occupied space. It's space that's not used for a specific programmatic function. We've taken those circulation spaces and designed them to accommodate large public gatherings and events, spaces the community could use when the courts are not in session. Moreover, the jury assembly area in off hours can do double duty as a public gathering space. It amounts to a kind of leveraging of the federal dollar to maximize use of a public building.

Lynch: And let me add, that the community reaction to this notion of the courthouse as a community center has been overwhelmingly positive. The people voted with their feet when they came into the courthouse for the open house. In fact, the next day, Sunday, the building was closed and we had hundreds of people knocking on the door, wanting to get in and see their new courthouse. Let me point out one other aspect of the building that may be unique. At the ground floor of this building there is a plaque integrated into the design of the wall, with the names of the workers who built this courthouse, workers of all colors, men and women. We thought that it was important to acknowledge our indebtedness to those workers who created this magnificent building. And as part of our opening ceremony we invited all of the workers back to the building so they could see their names and show their families what they had built.

Left: Costumed characters from Boston's historic past helped Judge Sandra L. Lynch (1st Cir.) (photo center) open the new Boston courthouse.

Below left: *Although the 27 courtrooms vary in size and purpose, they share the same form, material and detail.*

Q: In your experience, what would be the most important point (or perhaps points) to keep in mind in the planning and construction of a federal courthouse?

Woodlock: It's not merely a responsibility, it is a duty for the federal Judiciary to get actively involved in the process. I have spent some time looking at courthouses around the country. The ones that don't work are the ones where the judges were not actively involved. The ones that do work are the ones in which the judges had a major role. This is not merely establishing authority with the relevant players like GSA, but it is also being willing to make the kind of time commitment that is necessary to provide meaningful direction.

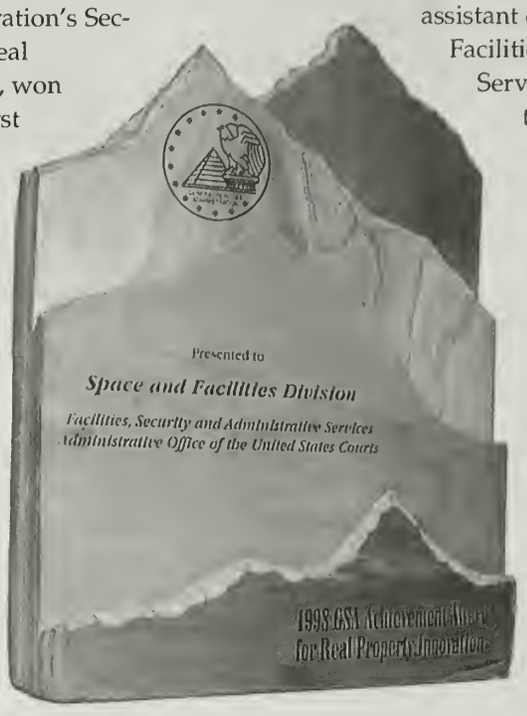
The importance of these buildings for these communities just can't be understated. There hasn't been a federal courthouse built in Boston for three generations. We hope this building will last five or more generations and leave a lasting impression on the community. Early on in this process, Justice Breyer said, "Do you know why we have to be so actively involved in this? Because people are going to look at this building and say the federal judges were involved in that building. If we get it right, generations of people will recognize that the federal Judiciary understood its responsibilities. If we get it wrong, there will be generations of people blaming us."

Lynch: It was absolutely essential that judges from both the court of appeals and the district court were involved in the design of the building, and throughout the construction phases. You will get back what you put into it, and people should not underestimate the time commitment. This is a serious project to be dealt with, with the same care and attention that we give to our caseloads. And Justice Breyer had it exactly right, the community looks at the building as a symbol of federal judicial power. That symbol should not be an arrogant one. It should be one of a good neighbor and a respected branch of government. This means judges have to ask questions and to listen to the different segments of the community, including the bar, that may be affected and synthesize the information and use it in the design of the building.

Judiciary Planning Process Wins GSA Award for Best Practice

The Judiciary's Long Range Facilities Planning process, developed by the Administrative Office, was a winning entry in the General Services Administration's Second Annual Achievement Award for Real Property Innovation. The LRFP process, won in the "Best Practice" category as the first systematic approach to space and facilities planning in the federal government. It was selected from among 41 entries submitted by federal agencies.

The LRFP process was begun in 1988 and uses statistical models of the judicial districts to anticipate the number of judicial officers and staff necessary to meet the demands of forecasted caseloads. Space needs over 5-, 10-, 20-, and 30-year increments then can be projected, and the requests for new or expanded courthouses prioritized. "The Judiciary recognizes the benefits of taking the long view with regard to courthouse construction," said AO Director Leonidas Ralph Mecham. "The foresight of Gerald Thacker, the assistant director of the Office of Space and Facilities, Security and Administrative Services, and his staff in developing the LRFP has put us in the forefront of space and facilities planning."



The GSA awards were developed to recognize the successes of the federal real property community, improve communications among real property professionals, and share the best policies and practices implemented by federal agencies. Entries were evaluated by a four-member independent panel of real estate and management experts representing a cross-section of private, government, and international organizations.

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FEDERAL DEPOSIT

Appellate Study Commission Issues Final Report

The members of the Commission on Structural Alternatives for the Federal Courts of Appeals, meeting in Washington to work on the final report, were (seated) retired Justice Byron R. White, and (photo left to right) Judge William D. Browning (D. Ariz.), N. Lee Cooper, Judge Pamela Ann Rymer (9th Cir.) and Judge Gilbert S. Merritt (6th Cir.).

The Commission on Structural Alternatives for the Federal Courts of Appeals submitted to the President and Congress its Final Report—which can be found on the Commission's Internet website at *http://app.comm.uscourts.gov.*

Chief Justice William H. Rehnquist appointed the Commission in late 1997 after Congress created it to study the structure and alignment of the federal appellate system, with particular reference to the Ninth Circuit. The Commission recommends several measures to "equip the courts of appeals with an ability, structurally and procedurally, to accommodate continued caseload growth into the indefinite future, while maintaining the quality of the appellate process and delivering consistent decisions—assuming, of course, that the system has the necessary number of judges and other resources." The five-member Commission is chaired by Retired Justice Byron White.

Among the Commission's conclusions and recommendations:

■ Congress should restructure the Court of Appeals for the Ninth Circuit but should not split the Ninth Circuit. Splitting the circuit (which includes district and bankruptcy courts as well as the court of appeals) is impractical and unnecessary. The circuit's boundaries and administration should be preserved without statutory change.

■ Congress should restructure the circuit's Court of Appeals into three

See ***Final Report*** *on page 5*

INSIDE

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INTERVIEW

Discussing the Issues at DOJ

An Interview With Deputy Attorney General Eric H. Holder, Jr.

Eric H. Holder, Jr. has been Deputy Attorney General since 1997. He was previously the U.S. Attorney for the District of Columbia, and an Associate Judge of the Superior Court of the District of Columbia.

Q: The Judicial Conference has strongly urged Congress to consider a statutory approach, as opposed to a constitutional amendment, to crime victims' rights. Where does the DOJ stand on this?

A: The Department's review of the issue of victims' rights has persuaded us that no satisfactory degree of protection for the rights of crime victims can be secured in the foreseeable future by any means other than a federal constitutional amendment.

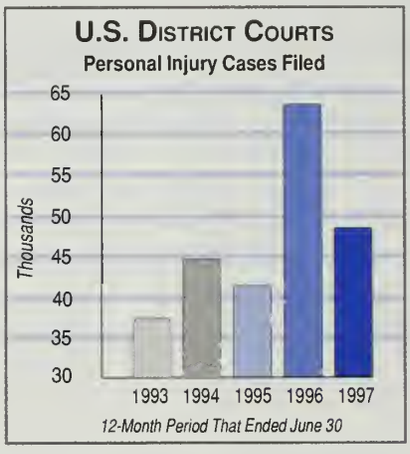
Despite the hard work of victims' advocates over the last two decades, state statutes and constitutions have proved ineffective in guaranteeing rights for victims. State efforts, while

See ***Interview*** *on page 10*

Five-Year Retrospective Takes Stock

A look back at five years of federal court caseloads reveals not only trends in filings, but also what factors influence filings.

It is little surprise that the overall federal caseload has been on the upswing since 1992. According to the *Federal Judicial Caseload, A Five-Year Retrospective*, published by the Administrative Office, filings between July 1, 1992 and June 30, 1997, of new cases in the appellate and bankruptcy courts reached record heights. In that time too, filings of criminal cases and defendants reached their highest levels since Prohibition was repealed in 1933. "The retrospective shows that the workload of the federal Judiciary has increased dramatically," said AO Director Leonidas Ralph Mecham. "But this 5-year look back not only gives us perspective, it tells us what influences our caseload. All indications are that our future caseloads will be larger and the demands on judicial resources even greater in the years to come."



CIVIL FILINGS

The retrospective shows that in 1997 civil case filings declined for the first time since 1991, largely because two of the major categories contributing to total civil filings—personal injury cases and prisoner petitions—dropped substantially. Why? Beginning June 25, 1992, breast implant cases were transferred from the state courts to federal courts. Due to the continued removal of breast implant cases from state courts to federal courts, personal injury filings increased 54 percent between 1995 and 1996. Many of these cases were filed twice, first when they were removed to federal courts and a second time when they were transferred to the Northern District of Alabama. By 1997 fewer breast implant cases were filed, and personal injury cases fell 24 percent.

Prisoner petitions fell 7 percent from 1996 to 1997, even though the number of cases had been increasing steadily since 1993. The fall was produced by a 30 percent drop in a single category of prisoner petitions, prisoner civil rights. What triggered the decline? In April 1996, Congress passed the Prison Litigation Reform Act (PLRA), which seeks to reduce the filing of frivolous petitions, in part, by imposing filing fees. Interestingly, the number of prisoner petitions rose for a short time as prisoners rushed to file petitions before the law—and new filing fees—took affect.

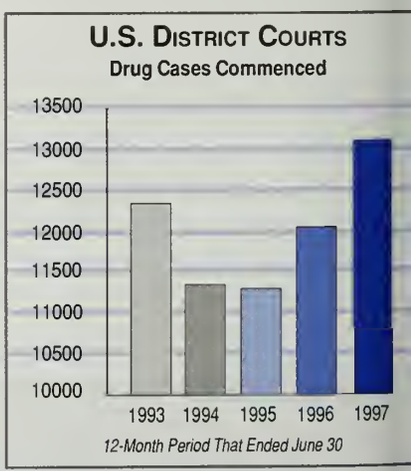
Changes in old laws also have impacted filings. The number of diversity filings has been affected by a change in the amount in controversy requirement for diversity jurisdiction. Diversity filings grew 11 percent from 1993 to 1997. In 1996, however, 28 U.S. C. §1332 was amended to increase the amount in controversy requirement for diversity jurisdiction cases from $50,000 to $75,000. The next year, diversity filings dropped 11 percent. This was not completely unexpected; a similar downward shift occurred in 1989 when the jurisdictional amount was increased from $10,000 to $50,000 and diversity cases continued to decline from 1989 to 1992. But it may not be entirely the amount in controversy that has driven the number of diversity cases. The 1997 drop may be due to a drop in breast implant cases.

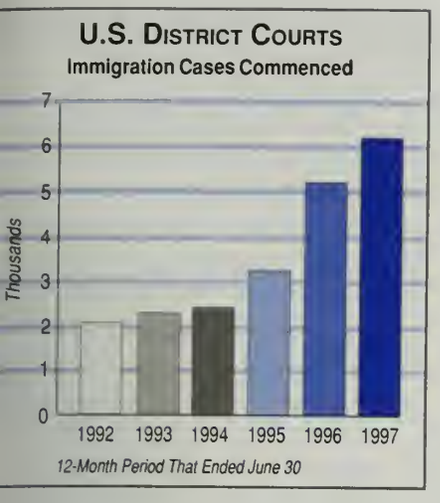
It is not always changes in the law that account for caseload shifts. Contract actions increased 16 percent in 1997 because of a 147 percent increase in filings to recover overpayments related to defaulted student loans. The U.S. Department of Education said the increase was due to its streamlined delinquent loan processing system.

CRIMINAL FILINGS

From 1993 to 1997 criminal cases filed increased 7 percent. From 1993 through 1995, however, there was a percent decline in cases filed. Drug cases, which have a major influence on total criminal filings, fell 8 percent during that time. Was there a decline in crime? Actually, between 1993 and 1994, assistant U.S. attorney positions in the Department of Justice (DOJ) were frozen, which resulted in fewer criminal cases being filed. After the freeze was lifted, from 1995 to 1997, the number of criminal defendants in cases filed increased 9 percent.

DOJ staffing also may have influenced another category of criminal cases: immigration. These cases grew 200 percent between 199 and 1997. In this time DOJ increased its efforts to secure the southwestern U.S. border with initiatives emphasizing the prosecution of alien smuggling and of attempted reentry by deported aliens or aliens previ-





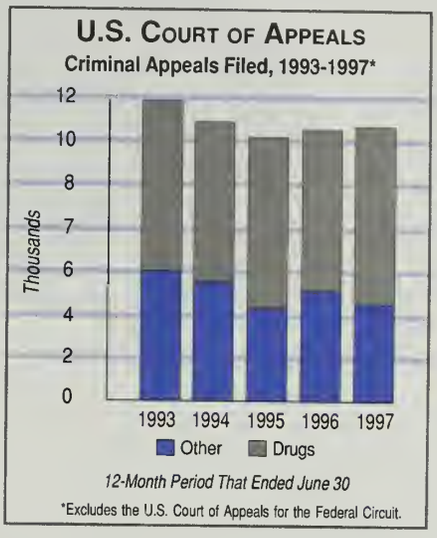
usly convicted of felonies. As a esult, the Southern District of alifornia led the nation in immigra- on filings in 1997.

Enforcement policies have af- ected other areas of criminal filings. runk driving and traffic cases ropped from 1993 to 1997, affected y changes in enforcement policies r military bases in Hawaii, as well s changes in enforcement priorities y local U.S. attorneys and by park olicy within federal parks.

PPEALS

Growing civil and criminal district urt caseloads eventually increase e number of appeals filed. Appeals lings rose 5 percent between 1993 nd 1997, caused mainly by a 29 ercent increase in prisoner petition ppeals. Prisoner petition appeals w constitute 31 percent of the ppellate caseload. The year 1996 w a boost in prisoner petitions aceable to the 1995 Supreme Court ecision in *Bailey v. U.S.*, as well as e enactment of the PLRA and the ntiterrorism and Effective Death enalty Act of 1996. As noted pre- ously, many inmates rushed to file etitions before the PLRA fee require- ent took affect. Other prisoner ppeals may have been filed in light *Bailey*, which established that for hanced penalties to apply for ing a firearm during a drug traf- king offense or crime of violence, a efendant actually must have used a gun while committing the offense. In addition, appeals may have been filed in reaction to the Antiterrorism Act, which sets strict time limits for acting on habeas corpus petitions and motions for rehearing.

Generally, filings for civil appeals rose 11 percent. Criminal appeals have fluctuated since 1993, affected between 1993 and 1994 by the same DOJ hiring freeze that reduced criminal filings in district courts. After declining in 1994 and 1995, criminal appeals rose 1 percent from 1996 to 1997. Drug appeals also constituted a smaller percentage of criminal appeals filed, declining from 51 percent in 1993 to 45 percent in 1997.



BANKRUPTCY FILINGS

In 1996, bankruptcy filings topped the one million mark for the first time, part of the long-term rise in filings during which the number of cases has increased 43 percent between 1993 and 1997. The vast majority of bankruptcy cases, 96 percent in 1997, are non-business or personal bankruptcies. Non-business cases rose 48 percent between 1993 and 1997. The rise in bankruptcy filings is most likely connected to the greater availability of consumer credit—which has produced record levels of debt as a percentage of personal income.

WORKLOAD AND CASELOAD

The Judiciary applies weights to filings in district courts as a means of accounting for differences in the time required for judges to resolve various types of civil and criminal actions. From 1993 to 1997, the total number of weighted civil and criminal filings per district judgeship climbed 13 percent. The weighted filing system was changed in 1993 to assign weights to criminal cases on a per defendant basis rather than on a per case basis.

Between 1995 and 1997, the number of criminal defendants in cases filed increased 9 percent due to an increase in drug cases filed. Drug cases typically require nearly twice the amount of work of judges and more judicial resources. For example, in 1997 the number of defendants in a non-drug case was 1.22, while the number of defendants per drug cases averaged 1.91.

With the increased bankruptcy caseload, the workload of the bankruptcy courts has expanded and courts have worked hard to keep pace. From 1995 to 1997, pending cases grew 22 percent, even though nationwide terminations were 31 percent higher in the same time period. The number of filings per authorized bankruptcy judgeship is 43 percent greater than the 1993 average and 26 percent greater than the average for 1996.

A five-year retrospective on the caseload confirms expectations that overall filings will continue to increase. And while anticipating these trends and projecting workloads helps distribute judicial resources where they are most needed, there are areas where the Judiciary cannot provide remedies. The Judiciary does not control its workload, which increases nearly every year. An increasing caseload translates to an increasing workload. Yet, no new Article III judgeships have been created since 1990, and no new bankruptcy judgeships have been created since 1992.

Where the Money Goes

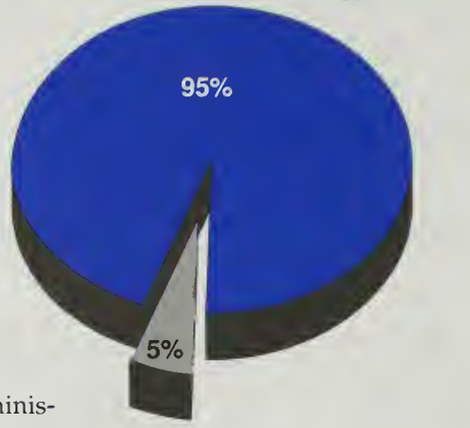
Allocating Resources in the Federal Judiciary for Fiscal Year 1999

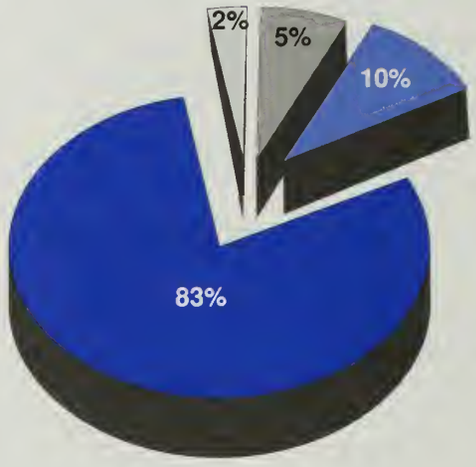
Fiscal year 1999 may be the harbinger of fiscal belt-tightening to come. Although the Judiciary fared relatively well, receiving total obligations of $4.06 billion, a 6 percent increase, Congress did not provide funds for new positions associated with workload growth. This meant that the Judicial Conference Executive Committee was unable to fund all courts at 84 percent of staffing formulas based on current workload. Administrative Office Director Leonidas Ralph Mecham warned that budget restrictions government-wide could make the next fiscal year more difficult for the Judiciary.

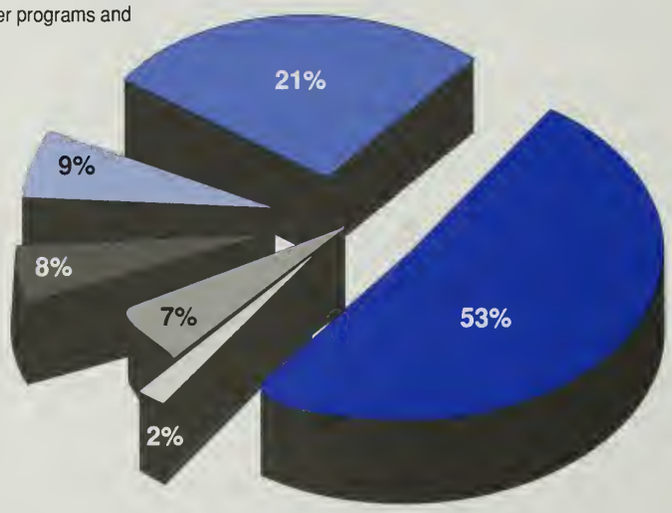
"Budget Committee Chair Judge John Heyburn, committee members, my staff, and I will work hard to obtain from Congress the best appropriation possible for fiscal year 2000; nevertheless, we need to prepare for the possibility of a lean year," Mecham said.

Based upon recent experience, Congress likely will not give the Judiciary its full appropriation request in fiscal year 2000—possibly as much as $200 to $300 million less than needed. At that lower funding level, it may be difficult for courts to maintain current services, much less count on additional funding for workload increases. Cutbacks on current spending levels would be certain. "Given the potential magnitude of the shortfall, it is essential we proceed to develop operational options for fiscal year 2000 and beyond at the district, circuit, and national levels," Mecham said, "Planning for 2000 and beyond needs to be a priority for every Judicial Conference program committee."

FY99 is not without its own problems. Funding will be cut off on June 15 for all agencies in the Commerce, Justice, and State, the Judiciary and Related Agencies portion of the omnibus appropriations act. This limitation is a result of the debate over census sampling and hopefully will be resolved in the wake of a Supreme Court ruling on the census sampling litigation. A major effort is already underway to exempt the Judiciary from the June 15 potential cut-off. For the months through June, however, here is how the Judiciary will distribute its fiscal resources.







Top: The budget is divided into two major categories with 95% allocated to the Courts of Appeals, District Courts, and other judicial services. The remaining 5% is divided between the Supreme Court, Court of Appeals for the Federal Circuit, Court of International Trade, Administrative Office, Federal Judicial Center, Payments to the Judiciary Trust Fund, and U.S. Sentencing Commission.

Right: The Appellate, district, and other judicial resources are further broken down into support for specific programs that includes fees of jurors and commissioners, court security, defender services, and salaries and expenses.

Below: The money allocated to salaries and expenses is further divided into salaries and benefits of supporting personnel, space and facilities, salaries and benefits of judges, operating expenses, automation and technology, and other programs and reserves.

First Complete Review of Ethics Opinions Ends

The first comprehensive review and revision of the Judiciary's 94 advisory opinions on ethics has been completed. The task, which took nearly two years, was undertaken by the Judicial Conference Committee on Codes of Conduct.

Historically, advisory opinions have been drafted by the committee in response to inquiries from judges or judicial employees on frequently raised issues or where an issue may have broad application. But with some opinions dating back to the 1970s, it was not uncommon for them to include advice that was superseded or qualified by changes in the codes of conduct, the Ethics Reform Act of 1989, and subsequent published advisory opinions. Although individual opinions had been revised over the years, this is the first time all opinions have been scrutinized and updated.

"Some of the older opinions the committee reviewed were not entirely accurate in light of changes to the various codes of conduct and consequently were more likely to befuddle than enlighten their readers," said Judge Carol Bagley Amon, chair of the Committee on Codes of Conduct. "The committee wants judges and judicial employees to maintain the highest ethical standards, so it is extremely important that accurate, up-to-date guidance be provided."

More than a dozen of the old advisory opinions were withdrawn. The remaining opinions were updated or revised to reflect current codes, concepts, and laws. A few overlapping opinions were consolidated. For example, the old advisory opinion on law clerks' bonuses contained majority and minority views that may have been confusing. The opinion was rewritten to streamline and clarify the advice. In another example, two opinions covering extrajudicial compensation and honoraria were combined.

In response to confidential inquiries from judges and judicial employees, the Committee on Codes of Conduct provides confidential advisory opinions on the application of the *Code of Conduct for U.S. Judges* and other judicial branch codes of conduct. The committee also publishes opinions on selected issues and recommends modifications of the various codes of conduct to the Judicial Conference.

Final Report *continued from page 1*

regionally based adjudicative divisions. Each regional division should have 7 to 11 judges, a majority of whom reside in its region. Each division should have exclusive jurisdiction over appeals from judicial districts within its region and should perform en banc functions as if it were a court of appeals. So that federal law does not vary from division to division, conflicting decisions by regional divisions should be resolved by a "Circuit Division" of 13 judges—the chief judge of the circuit plus 12 other active circuit judges representing the regional divisions.

- Because circuit splitting is not feasible to accommodate caseload growth in the federal appellate courts, Congress should authorize, but not require, any court of appeals to organize into smaller adjudicative divisions when it exceeds 15 judgeships.
- Congress should authorize, but not require, each court of appeals to decide some types of cases using panels of two rather than three judges.
- Congress should authorize, but not require, circuit judicial councils to establish district court appellate panels and to designate types of appeals to be taken to such panels. These appeals would be decided by panels of two district judges and one circuit judge, with any further appellate review only by leave of the court of appeals.
- Congress should forgo any changes in the bankruptcy appellate structure until the Judicial Conference of the United States completes its study of this matter and submits a report to Congress.

Two members of the Commission wrote separately to present a proposal to reduce diversity of citizenship jurisdiction in the federal courts.

The Commission conducted six public hearings and received more than 90 written comments before preparing its draft report, and received nearly 80 written comments on the draft report it issued on October 7, 1998. All comments have been posted on the Commission's website.

In addition to making its report available on its Internet site, the Commission has, pursuant to statute, delivered a copy to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives. Copies will also be distributed to, among others, all who submitted comments to the Commission in the course of its deliberations. The Commission will publish its working papers and close its office by March 19, 1999.

In addition to Justice White, members of the Commission are Vice-chair N. Lee Cooper, a Birmingham lawyer and past president of the American Bar Association, Judge Gilbert Merritt, who has been a member of the Court of Appeals for the Sixth Circuit since 1977; Judge Pamela Ann Rymer, who has been a member of the Court of Appeals for the Ninth Circuit since 1989, and Judge William D. Browning, who has served on the District Court for the District of Arizona since 1984.

Grants Increase Public Access to Court Records

In fiscal year 1998, five districts received grants for projects that will increase public access to electronic court records. The grants were supplied through a research and development grants program guided by the Electronic Public Access (EPA) Working Group. The initiative is part of the Administrative Office's efforts to promote innovative, locally developed technology applications in the courts. In evaluating requests for EPA grants, the EPA Working Group looks for, among other criteria, court programs that address major problems, use technology in innovative ways, improve public access to court information, and offer the greatest possibility for national application. The EPA Working Group, an ad hoc advisory group whose members are drawn from the courts, provides advice to the AO on issues concerning public access to electronic court records and develops recommendations to the Judicial Conference on such matters.

The following courts received EPA program grants in FY98. Here is how they plan to use the funds.

District of Wyoming, District Court

According to Systems Analyst Elizabeth Conley, the District of Wyoming came up with the idea of a public access to historical court records system because finding records is a time-consuming and inefficient task. The public might have to search microfiche, card, and computer files just to locate a record. Then staff had to pull books to produce the actual docket and make copies. The court's EPA grant will make all docket sheets available electronically. The old docket sheets will be scanned and interfaced with the court's locally developed party/case index. This also will give access to docket sheets, for the first time, to the Casper, Wyoming, office where one of the three Wyoming district court judges sits.

District of South Carolina, Bankruptcy and District Courts

Public access to the clerk's office in the district court for the District of South Carolina was up a flight of stairs—not the most convenient location for sight-impaired visitors or visitors in wheelchairs, who had to take a circuitous route for access. The district has proposed a public access kiosk in the main office of each court to accommodate the public, the bar, and court personnel, including those with visual and hearing impairments. With such user-friendly technology as touch screen monitors, Braille keyboards and voice recognition commands, the kiosk will be a gateway to court information for both the district and bankruptcy courts.

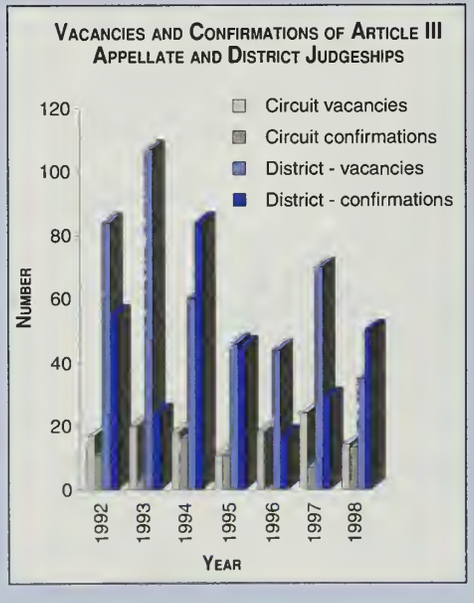
District of New Mexico, District Court

Over 50 court forms will soon be on the Internet in the District of New Mexico where law clerks, attorneys, law firms or chambers staff can fill them out electronically and send them in. According to Robert March, clerk of court for the District of New Mexico, anyone who wants

Judicial Vacancies & Confirmations in the 105th Congress

During the second session of the 105th Congress, the Senate confirmed 65 federal judges: 13 circuit judges, two to the Court of International Trade, and 50 district courts judges. This brought the number of judges confirmed in both sessions of the 105th Congress to a total of 101, compared to the 75 judges confirmed in the 104th Congress. As he completes six years in office, President Clinton has seen the Senate confirm 305 of the judges he nominated. By comparison, President Reagan, another two-term president, in eight years appointed a total of 389 judges, confirmed between 1981 and 1988.

As of December 1, 1998, there were 55 vacancies, 16 in the courts of appeals, 38 in the district courts, and one on the Court of International Trade. There are no nominations pending because all nominations are returned to the White House at the end of a Congress, and there will be no opportunity to reduce the number of vacancies until the 106th Congress begins next year.



CALENDAR DATES FOR THE THIRD BRANCH

Vol. 30 Number 12 December 1998

JANUARY

5-7 **Tuesday-Thursday**
Committee on Automation and Technology

7-8 **Thursday-Friday**
Committee on Federal-State Jurisdiction

7-8 **Thursday-Friday**
Committee on Rules of Practice and Procedure

7-8 **Thursday-Friday**
Committee on the Administration of the Bankruptcy System

11-12 **Monday-Tuesday**
Committee on Financial Disclosure

14-16 **Thursday-Saturday**
Committee on Codes of Conduct

15-16 **Friday-Saturday**
Committee on the Budget

25-29 **Monday-Friday**
Orientation for Newly Appointed District Judges

FEBRUARY

11-12 **Thursday-Friday**
Executive Committee

22-26 **Monday-Friday**
Video Orientation for Newly Appointed District Judges

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 30 Number 12 December 1998

APPELLATE CONFERENCE ATTORNEY, Seventh Circuit

The U.S. Court of Appeals for the Seventh Circuit is seeking an attorney to conduct settlement conferences in civil appeals at the U.S. courthouse in Chicago. Applicants for the position must have strong legal analytical ability; a firm grasp of federal civil and appellate practice and procedure; substantial and varied litigation experience; and exceptional aptitude, skills, and motivation for problem solving and consensus building. Training or experience in mediation, arbitration, or other ADR processes is desirable. Candidates must be admitted to practice before the highest court of a state or territory of the U.S. Salary: $63,347 to $102,990 annually, depending on experience. Applications must include five copies of the applicant's resume, a cover letter describing the applicant's particular interest in, and qualifications for, the position of appellate conference attorney; and a list of three references who could comment knowledgeably on the applicant's suitability for the position. Send applications to Conference Coordinator, Settlement Conference Office, U.S. Court of Appeals, 219 S. Dearborn Street, Room 110, Chicago, Illinois 60604. **Application deadline: January 6, 1999.**

BANKRUPTCY JUDGESHIP, Northern District of Ohio at Toledo

Applications are being accepted for the position of bankruptcy judge in the Northern District of Ohio, sitting at Toledo. Bankruptcy judges are appointed to 14-year terms. Salary: $125,764. Full public notice with qualification standards is posted in the offices of the clerks of the U.S. Court of Appeals for the Sixth Circuit and the U.S. District and Bankruptcy Courts for the Northern District of Ohio. For further information and application forms, contact the Office of the Sixth Circuit Executive, U.S. Court of Appeals for the Sixth Circuit, 503 Potter Steward U.S. Courthouse, Cincinnati, Ohio 45202-3988. Phone (513) 564-7200. **Application deadline: Friday, January 29, 1999.**

CHIEF DEPUTY CLERK, Eleventh Circuit, Atlanta, Georgia

The Chief Deputy Clerk is a senior-level position reporting to the clerk. Assists the clerk with management, supervision and administrative operation of the circuit clerk's office. Completion of an undergraduate degree from an accredited university is required. A post-graduate degree in judicial or public administration, business, political science, or a related field is desirable. Law degree highly desirable. A minimum of six years of progressively responsible managerial or administrative experience, three of which must have involved substantial management responsibility, preferably in an appellate or federal court environment. Salary: $90,316 to $117, 407 depending upon qualifications. Send letter of interest and resume to Thomas K. Kahn, 56 Forsyth Street, N.W., Atlanta, GA 30303, Attn: Personnel Specialist. A copy of the announcement and position description are available upon request (404/335-6202). **Application deadline: February 1, 1999, or until filled.**

CHIEF PROBATION AND PRETRIAL SERVICES OFFICER, Northern District of Florida

Applications are being accepted for the position of Chief Probation and Pretrial Services Officer in the District Court for the Northern District of Florida, at either Pensacola or Tallahassee. Salary: Up to JSP 17 ($102,983 - $116,700). A bachelor's or master's degree in social sciences, criminal justice, public administration or related field(s), or a law degree is required as well as a minimum of nine years of progressively responsible administrative, technical, and managerial experience. At least three years of this experience must have been in a state or federal court system, with one year at, or equivalent to, the CL30/JSP 14 level. First-time appointees to positions covered under law enforcement officer retirement provisions must not have reached their 37th birthday at the time of appointment. Candidates must have a performance history that demonstrates proven skill in managing limited resources against multiple demands, strong organizational prioritizing and problem solving skills, and solid oral and written communication skills. Submit cover letter with detailed resume of qualifications and experience, including salary history, letters of reference (both professional and personal), and other materials that support the applicant's qualifications to Robert A. Mossing, Clerk, U. S. District Court for the Northern District of Florida, 110 E. Park Avenue, Rm. 122, Tallahassee, FL 32301. **Application deadline: February 5, 1999**.

EQUAL OPPORTUNITY EMPLOYERS

o file a form or request information vill be able to find it on the court's veb site. That will save time and egwork for the public, and a lot of questions for court staff. Internet ccess will allow rapid updating of orms and cut down on printing nd inventory. The development vould include the production of lank forms as well as templates, hat can be used to complete the orms. And while the forms will e accessible from any personal omputer, the system also will be vailable at public access terminals vithin the court for members of the ublic who do not have Internet ccess.

estern District of New York, District Court

Chief Deputy Clerk Jeanne pampata, in the Western District f New York, was researching er family tree not long ago, a sk that involved searching through nearly 50,000 naturalization cards by hand. Convinced there had to be an easier way, she proposed the development of an automated naturalization information system for her district. The court plans to use the EPA grant to develop an indexed database application which will include images of the original naturalization records, in some cases right down to the signature of the applicant, from the years 1926 through 1991. The information, according to Spampata, will be put on CD-ROMs and given to public libraries, where the public can easily search and review naturalization information. The development of this system will save the court approximately 20 hours per month of deputy clerk's time. The district hopes to have the project completed in time to celebrate its 100th anniversary in the year 2000.

District of Puerto Rico, District Court

The District of Puerto Rico proposal is to develop a PC-based electronic calendar system where users are able to access proceeding information on their own by receiving electronic notification or by accessing a device that will provide them with such information. This will replace the hard copy calendar. Meeting this objective will ensure that the needs of the public, members of the bar, federal agencies, and the clerk's office will continue to be met in a more timely and up-to-date manner. It will provide hard-copy document information, automatically, 24 hours a day, seven days a week, to a caller equipped with a touch-tone phone or any GROUP III facsimile machine. Also, TV monitors will be placed in the courthouse to provide daily up-to-date information on the locations of the proceedings for the day.

ncrease in Bankruptcy Filings Slows in Fiscal Year 1998

Bankruptcy filings in fiscal year 998, the 12-month period ending eptember 30, totaled 1,436,964, as lings once again topped the one illion mark. While the filings r FY98 were a 5 ercent increase ver the same scal year period 1997, this rowth was less an the 23 ercent increase FY97 and the 26 ercent increase FY96. Bankptcy filings first ceeded one illion in the 12onth period ding June 30, 96.

Filings for the 12-month period may have increased, but filings for the final quarter of the fiscal year dipped slightly when compared to the third quarter. This was due to a smaller number of business bankruptcy filings. Most bankruptcy filings are non-business or personal filings. This drop may be due to the seasonal nature of bankruptcy filings; filings in the final quarter of the fiscal year are typically lower than the third quarter totals.

For information on bankruptcies by chapter and district, visit the Judiciary's website at *http://www.uscourts.gov*.

Business and Non-Business Filings

FY 1994-98

FY	Business	Non-Business	Total
1998	47,125	1,389,839	1,436,964
1997	54,252	1,313,112	1,367,364
1996	53,520	1,058,444	1,111,964
1995	51,042	832,415	883,457
1994	54,425	783,372	837,797

JUDICIAL MILESTONES

Appointed: Robert B. King, as U.S. Court of Appeals Judge for the Fourth Circuit, October 23.

Appointed: Sonia Sotomayor, as U.S. Court of Appeals Judge for the Second Circuit, October 13.

Appointed: William B. Traxler, as U.S. Court of Appeals Judge for the Fourth Circuit, October 21.

Appointed: H. Dean Buttram, Jr., as U.S. District Judge for the Northern District of Alabama, November 12.

Appointed: Donovan W. Frank, as U.S. District Judge for the District of Minnesota, November 2.

Appointed: David R. Herndon, as U.S. District Judge for the Southern District of Illinois, November 16.

Appointed: Robert G. James, as U.S. District Judge for the Western District of Louisiana, October 31.

Appointed: Inge Prytz Johnson, as U.S. District Judge for the Northern District of Alabama, October 23.

Appointed: Yvette Kane, as U.S. District Judge for the Middle District of Pennsylvania, October 27.

Appointed: Colleen McMahon, as U.S. District Judge for the Southern District of New York, October 26.

Appointed: James M. Munley, as U.S. District Judge for the Middle District of Pennsylvania, October 26.

Appointed: Rebecca R. Pallmeyer, as U.S. District Judge for the Northern District of Illinois, October 26.

Appointed: William H. Pauley, III, as U.S. District Judge for the Southern District of New York, October 28.

Appointed: Patricia A. Seitz, as U.S. Judge for the Southern District of Florida, November 16.

Appointed: Thomas J. Whelan, as U.S. District Judge for the Southern District of California, November 5.

Appointed: Francis M. Allegra, as Judge for the U.S. Court of Federal Claims, October 16.

Appointed: Lawrence M. Baskir, as Judge for the U.S. Court of Federal Claims, October 23.

Appointed: Lynn Jeanne Bush, as Judge for the U.S. Court of Federal Claims, October 26.

Appointed: Emily C. Hewitt, as Judge for the U.S. Court of Federal Claims, November 10.

Appointed: Bill G. Parker, as U.S. Bankruptcy Judge for the Eastern District of Texas, October 30.

Appointed: Thomas M. DiGirolamo, as U.S. Magistrate Judge for the District of Maryland, September 18.

Appointed: Janet F. King, as U.S. Magistrate Judge for the Northern District of Georgia, October 20.

Appointed: Sidney I. Schenkier, as U.S. Magistrate Judge for the Northern District of Illinois, October 30.

Elevated: Judge Joe Billy McDade, to Chief Judge, U.S. District Court for the Central District of Illinois, succeeding Judge Michael M. Mihm, November 19.

Senior Status: Court of Appeals Judge Betty B. Fletcher, U.S. Court of Appeals for the Ninth Circuit, November 1.

Senior Status: Judge Thelton E. Henderson, U.S. District Court for the Northern District of California, November 28.

Senior Status: Judge John V. Parker, U.S. District Court for the Middle District of Louisiana, October 31.

Retired: Bankruptcy Judge John D. Schwartz, U.S. Bankruptcy Court for the Northern District of Illinois, November 1.

Resigned: Magistrate Judge Leonard Bernikow, U.S. District Court for the Southern District of New York, November 2.

Resigned: Magistrate Judge Rebecca R. Pallmeyer, U.S. District Court for the Northern District of Illinois, October 25.

Deceased: Senior Court of Appeals Judge Anthony J. Celebrezze, U.S. Court of Appeals for the Sixth Circuit, October 29.

Deceased: Court of Appeals Judge John D. Kelly, U.S. Court of Appeals for the Eighth Circuit, October 21.

Deceased: Senior Judge Lee P. Gagliardi, U.S. District Court for the Southern District of New York, October 30.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of December 1, 1998

Courts of Appeals	
Vacancies	16
Nominees	0
District Courts	
Vacancies	38
Nominees	0
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	24

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Search Begins for New Federal Judicial Center Director

The Board of the Federal Judicial Center has begun its search for a successor to Judge Rya W. Zobel, who has announced that she will return to the District of Massachusetts in July 1999. Zobel has served as Director of the Center since 1995. A search committee appointed by the Chief Justice will make recommendations to the Board. Chief Judge Marvin E. Aspen (N.D. Ill.) chairs the committee. Other members are Judge Bruce M. Selya (1st Cir.) and Judge Michael A. Telesca (W.D. N.Y.).

The Center's statutory functions include

- Conducting research and analysis about federal court administration, case management, sentencing, and the litigation process, primarily for committees of the Judicial Conference.
- Providing orientation and continuing education for judges and court employees, through seminars and workshops, education publications, satellite broadcasts, and multi-media programs.
- Fostering judicial federalism, international judicial education, and preservation of federal court history.

The Center has a staff of 145 and a fiscal 1999 appropriation of $17,716,000.

The Board expects the director to relocate to the Washington, D.C., area and commit to a term of at least four years, with the expectation that the tenure will not exceed seven years. There are no other mandatory criteria, although the Board has asked the committee to consider, among other things, applicants' personal, management, and leadership skills and qualifications in the fields of education and research, including scholarship. Substantial familiarity with the federal courts and their operations is important. The Board has specified that at least one of the names recommended to it by the search committee be that of a federal judge, but it also seeks applications from nonjudges with the listed qualities.

All interested persons should contact the committee by letter (in triplicate) expressing interest in the position and enclosing a resume.

28 U.S.C. § 133(b) provides that if an active federal judge becomes Center director, the President shall appoint an additional judge for the director's court, although if the director returns to the court as an active judge, the next vacancy will go unfilled.

All expressions of interest should be sent to Chief Judge Aspen, preferably by February 7, 1999, at the U.S. District Court, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60604.

The committee expects to submit its recommendations to the Board in late March and the Board expects to select the next director in April.

Nominations Open for 1998 Devitt Award

Nominations for the 17th annual Edward J. Devitt Distinguished Service to Justice Award are open. The award, named for the late Judge Edward J. Devitt (D. Minn.), recognizes the dedicated public service of members of the federal Judiciary. All Article III federal judges are eligible for nomination. Entries should describe the nominee's accomplishments and professional activities that have contributed to the cause of justice. Any interested person or organization may submit a nomination by January 15, 1999, to Devitt Distinguished Service to Justice Award, 180 North Michigan Avenue, Suite 600, Chicago, IL. 60601-7401.

Members Deserve Pay Raise, Livingston Says

Shortly after his election as House Speaker, Representative Bob Livingston (R-LA) appeared on the NBC news show Meet the Press. Among the questions fielded by the new Speaker was one on the timeliness of a congressional pay raise. Here's his response.

"Well, we've not had a cost-of-living adjustment in the last year. We had one the previous year. I think that when you compare to all the cost-of-living adjustments for both military and civilian employees, you'll see that the members of Congress have gotten a lot fewer cost-of-living adjustments. I'm not against giving members of Congress a cost-of-living adjustment."

When asked if he would push for a pay raise bill, Livingston replied:

"I haven't made up my mind whether I'll push for it, but I think that the members, frankly, deserve it. One thing I'd like to say about that is that Republican and Democrat alike, members of Congress are hard-working people. I realize they get a bad rap in the media, and at election time, frankly, we're all targets for political reasons. But every single member represents about 600,000 people back home, and they work hard to represent those people. If they don't work hard, they're tossed out, and rightfully so. I think that, frankly, periodically, it's not unreasonable that they should be entitled to a pay raise."

Interview continued from page 1

admirable, are simply not sufficiently consistent, comprehensive, and authoritative to protect victims' rights adequately. Moreover, the rights created by the various state statutes and constitutional provisions provide no minimum baseline of protections for victims and instead have developed into a patchwork of rights, often different in scope and effectiveness from jurisdiction to jurisdiction.

The Attorney General has stressed the need to craft a Victims' Rights Amendment that preserves the fundamental protections of those accused of crimes. While conflicts between victims' rights and the protections accorded defendants by the Bill of Rights and the Fourteenth Amendment likely would be rare, the Attorney General has said that in those rare instances "we must as a society ensure that a fair trial is not jeopardized." The Victims' Rights Amendment accordingly should include "express language stating clearly that the rights the amendment creates shall not be applied in a manner that violates those irreducible rights to which a criminal defendant is constitutionally entitled."

Q: The Judicial Conference also has questioned the federalization of state crimes, for example the prosecution of hate crimes in federal courts, contending these offenses are already adequately prosecuted in state courts, and that these and other prosecutions threaten to overwhelm the federal courts. Would DOJ like to see more state crimes brought into federal courts? And why?

A: Clearly there are many crimes that are traditionally best addressed by state and local law enforcement. However, even where state and local law enforcement take the lead in combating these crimes, federal resources may lend critical support to their efforts by providing leadership and investigative and prosecutive coordination. And, in some circumstances, the nature of the criminal conduct demands that federal authorities have primary responsibility for addressing the problem. For example, state and local law enforcement have neither the resources nor the authority to combat all aspects of the offenses committed during the multidistrict trafficking in drugs, weapons, or aliens. Further, small jurisdictions on occasion have become overwhelmed by crime largely local in nature and have solicited federal help in handling the problem.

We are sensitive to the concerns expressed by the Judiciary that the federalization of crimes not be allowed to overwhelm the federal court system. In the area of hate crimes, for instance, state and local law enforcement agencies continue to play the primary role in the investigation and prosecution of all types of hate crimes. The federal government prosecutes only a limited number of such cases. We predict that the enactment of a proposal like the Hate Crimes Prevention Act of 1998, which was under consideration by the Congress during its last session, would result in only a modest increase in the number of hate crimes prosecutions brought each year by the federal government.

Q: There has been much criticism of Congress and the White House over the slow pace of judicial nominations and confirmations. DOJ reviews all nominations.

Deputy Attorney General Eric H. Holder, Jr.

Has this process contributed to the slow pace?

A: The Justice Department has a quick review that is an essential step in the screening process for judicial nominations. The DOJ receives the names of individuals who are potential nominees to the federal bench. The DOJ immediately reviews the candidate's credentials and qualifications, interviews the candidate in person, and makes inquiries of the legal community in which the candidate works.

Following successful completion of this process, the FBI conducts a full-field background investigation, which usually takes between four and six weeks. The American Bar Association also conducts an independent evaluation during this same period. If the candidate is determined to be qualified on the basis of these reviews, the Attorney General then recommends nomination by the President.

Since the conclusion of the 105th Congress last month, the DOJ and the Administration have continued to work to review potential nominees

for the pending circuit and district court vacancies. The executive branch intends to continue to prepare as many candidates as possible for nomination in January 1999, so that we can continue our work with the Senate to fill vacancies and to provide federal litigants with a full bench of excellent judges. We hope that the progress we enjoyed during the second session of the 105th Congress will continue when the 106th Congress convenes in January.

Q: The Judicial Conference's Subcommittee on Federal Death Penalty Cases recently produced a report on the cost, availability and quality of defense representation in federal death penalty cases. The report found that the average cost of defense representation is reasonable, while recommending ways to reduce costs. How does DOJ view prosecution costs?

A: As we gain more experience in prosecuting capital cases, the cost of prosecution will likely decline. That experience, thus far, has led us to devote a substantial amount of time and effort to evaluating and improving the manner in which capital cases are handled by federal prosecutors.

In February of this year, we invited all assistant U.S. attorneys (AUSAs) who have prosecuted capital cases to come to Washington for a two-day meeting to exchange ideas and suggestions on more efficient and effective ways to handle these cases.

We have established a unit within the Criminal Division dedicated to the review of U.S. attorneys' indictments and submissions on capital defendants. This unit will staff the senior DOJ officials who serve on the Capital Cases Review Committee and will provide advice, as well as litigation support, to AUSAs handling these cases. In addition, we have established a resource center that includes both electronic and hard copy collections of briefs, motions, and responses to motions on all capital punishment constitutional issues. This resource center is available to all AUSAs prosecuting capital cases and can significantly aid them by reducing the amount of time devoted to research.

Q: As you know, Congress has passed legislation to give Executive Schedule employees, members of Congress, and federal judges only a single cost-of-living adjustment since 1993. Since DOJ has an interest in recruiting the best qualified nominees and for retaining judges on the bench, will DOJ urge the administration to support COLAs or pay increases in 1999?

A: The Congress adjourned for the year without providing for any kind of a pay increase for the Judiciary in fiscal year 1999. We do support a cost-of-living adjustment for the Judiciary and are hopeful that authority to fund such an increase will be included in the fiscal year 2000 appropriations.

Q: The Judicial Conference has urged that U.S. trustees be removed from the political appointment process and placed in an independent agency. How would DOJ view such a change?

A: The Department of Justice has taken a position strongly opposing any proposal to take the U.S. Trustee Program out of the DOJ. Being a part of the DOJ gives the trustee program litigators credibility and facilitates their relationship with other DOJ components such as the U.S. attorneys, the litigating divisions, the FBI, and the Inspector General. Not only do these and other DOJ units play an important part in helping the program carry out its mandate, but access to them is a major cost saving to the program. In addition, the recruitment of top flight U.S. Trustees, managers, lawyers, and accountants has been greatly aided because they are an agency within the DOJ. Efforts to convince the Congress of both the substantive positions on bankruptcy matters and the validity of the program's appropriations requests also have been reinforced by their support by the DOJ.

In addition, the DOJ disagrees that the U.S. Trustees should be removed from the political appointment process. The selection of U.S. Trustees was patterned after the process used for selecting U.S. attorneys, U.S. marshals, and federal judges. Appointment by the Attorney General has added stature to the U.S. Trustee position and brought highly qualified bankruptcy practitioners to the program.

Q: In some cases, the Judiciary must provide public defenders for criminal defendants whose assets have been seized by DOJ. Would DOJ support funding of public defender attorneys from the Asset Forfeiture Fund (AFF)?

A: The DOJ strongly supports appropriate funding levels for public defenders. We supported the efforts of the Administrative Office to remove the Nickles amendment from the 1999 appropriations act which would have put a ceiling on monthly compensation for CJA-appointed attorneys to make such compensation equivalent to the monthly salary paid to U.S. attorneys. In addition, we have supported efforts by the Administrative Office and others to raise the awareness on Capitol Hill about the need to fully fund the defense side of the criminal justice system.

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However, we do not believe that it is appropriate to finance the CJA program through the AFF. While there are instances of the Judiciary having to appoint a public defender to defend a defendant whose assets have been seized, the greatly expanding costs of the CJA program cannot be tied to the assets forfeiture program. We believe that it makes more sense to work toward educating the Congress about the need for adequate funding for criminal defense and leaving the AFF for the purposes that it was intended to be used.

Q: Hidden in the Omnibus Appropriations Act is a provision that would require federal prosecutors to comply with state laws and rules governing attorneys in states where the attorney engages in his or her duties. Won't this provision make multi-state investigations difficult?

A: The provision will seriously interfere with the work of prosecutors to enforce federal law, and we are urging Congress to amend or repeal it before it takes effect in April. The provision effectively cedes authority over the conduct of federal attorneys to states and state bars, and in so doing, it may allow states and state bar authorities to control how federal law is enforced in those states. State bar authorities pass rules that not only impact ethical conduct by attorneys, but also attempt to regulate the steps that prosecutors and agents may take in investigating crime. State bars have established rules, for example, limiting whether investigators supervised by prosecutors may speak with corporate whistleblowers, and controlling how prosecutors may investigate witness tampering and obstruction of justice. Ceding such authority in these areas to state bars would seriously undermine federal law enforcement.

In addition, by requiring federal prosecutors to comply with a web of conflicting rules in all 50 states, the provision will make it far more difficult to conduct a single, coordinated nationwide or multi-state investigation of criminal conduct. Recently we have successfully prosecuted such multi-state cases as the Oklahoma City bombing, a number of drug cartel conspiracies, and telemarketing fraud conspiracies. The new provision could frustrate the prosecution of crimes that are of the same magnitude as these cases.

Q: Shouldn't federal prosecutors be governed by ethics rules?

A: Federal prosecutors already have strict, effective ethics rules. They are governed by ethics rules in the states where they are licensed, in the federal courts where they practice, and by federal regulation. The provision in the omnibus act would not make prosecutors more ethical; it would only burden prosecutors and delay justice.

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The 1998 Year-End Report of the Federal Judiciary

Overview

The federal Judiciary enters the last year of the 20th century immersed in many of the same struggles that have defined our federal system of government for 210 years. The administration of justice is affected not only by the relationships among the judiciary and the other two branches of the federal government, but also by the balance of power between the federal and state governments. In this, my 13th Year-End Report, I will address several of the problems affecting the Judiciary in 1998.

I am pleased to report on the progress made in 1998 by the Senate and the President in the appointment and confirmation of judges to the federal bench—a need that I raised in my 1997 Report as one for which both the Executive and Legislative branches bore responsibility. The Senate confirmed 65 judicial nominees in 1998, a figure that is above the average number of judges nominated and confirmed in recent years. These appointments will help address the disparity between the courts' workload and their resources. I also note my gratitude to senior federal judges who, despite their semi-retired status, continue to help ease backlogs in courts around the country.

I also extend my thanks to Congress for continuing to provide adequate financial support to the Judiciary as we work together to maintain a balanced budget. The Judiciary remains committed to fiscal responsibility, and for its part, requested the smallest percentage funding increase in 20 years for fiscal year 1999, even as it faces a growing caseload. The Third Branch is particularly appreciative of the appropriation for the construction of 13 new or expanded courthouse facilities for fiscal year 1999. The new courthouses will replace aging and obsolete facilities and are much needed to alleviate overcrowded conditions and reduce security risks.

Appointments, Jurisdiction, and Salaries

Although the Judiciary is strengthened by the progress made on important issues in 1998, serious problems continue to confront us. The most pressing of those problems are not new, but they have grown in importance either from the neglect or ambivalence of the other branches of government. They are: (1) the failure to appoint any Commissioners to the United States Sentencing Commission—all seven Commissioner positions are vacant; (2) the growing caseload in the federal Judiciary resulting from continued expansion of federal jurisdiction; and (3) the continuing relative decline in judicial salaries. There are, of course, many challenges facing the Judiciary. I focus primarily on these three problems, however, because they need immediate attention. All three are soluble.

Appointments to the United States Sentencing Commission

The political impasse on the appointments to the United States Sentencing Commission, which has been problematic for the past few years, has now reached stunning proportions. There currently are no Commissioners at the Sentencing Commission and no nominations are pending. The failure to fill these vacancies is all the more egregious when one considers the fact that the seven Commissioners authorized by statute have staggered six-year terms, and that there are additional statutory constraints to insure a bipartisan Commission. For example, at least three of the Commissioners must be federal judges, and no more than four can be members of the same political party. The fact that no appointments have been made to fill any one of these seven

see ***Report*** *on page 2*

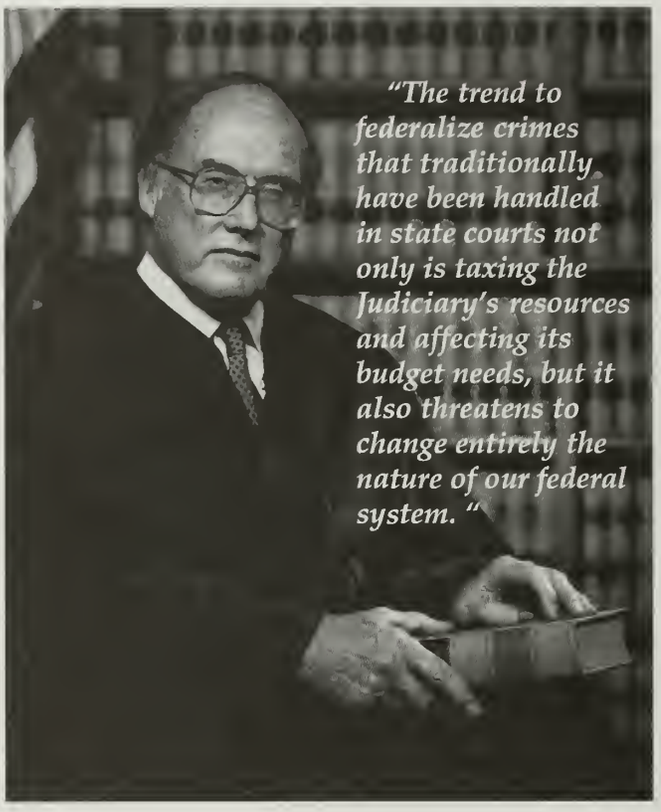
vacancies is paralyzing a critical component of the federal criminal justice system.

The Sentencing Commission was created under the Sentencing Reform Act provisions of the Comprehensive Crime Control Act of 1984. Its principal purposes are to reduce disparity in sentencing in the federal courts; to establish sentencing policies and practices for the federal courts, including guidelines prescribing the appropriate form and severity of punishment for offenders convicted of federal crimes; to advise and assist Congress and the Executive Branch in the development of effective and efficient crime policy; and to collect, analyze, research, and distribute a broad array of information on federal crime and sentencing issues, serving as an information resource for Congress, the Executive Branch, the courts, criminal justice practitioners, the academic community, and the public.

Although the staff of the Commission has been able to carry on the Commission's routine functions, in its present state the Commission is unable to perform some of its core and crucial responsibilities. For example, there are no Commissioners to propose guideline amendments or to take action on Congressional directives or implement legislation. There are no Commissioners to resolve or address circuit conflicts in Sentencing Guidelines interpretations. Every commission needs to make adjustments or respond to changing circumstances or new information. The Sentencing Commission is unable to do so until Commissioners are appointed. With criminal cases in federal courts reaching historic levels, the Judiciary needs a fully functioning Sentencing Commission. If we are going to have Sentencing Guidelines, the Sentencing Commission must be empowered to do its work. The President and the Senate should give this situation their immediate attention.

Caseload and Expanding Jurisdiction

The number of cases brought to the federal courts is one of the most serious problems facing them today. Criminal case filings in federal courts rose 15% in 1998—nearly tripling the 5.2% increase in 1997. Over the last decade, Congress has contributed significantly to the rising caseload by continuing to federalize crimes already covered by state laws. A series of such laws have been enacted in the past few years, including, to name a few, the Anti-Car Theft Act of 1992, the Child Support Recovery Act of 1992, the Animal Enterprise Protection Act of 1992, and the recent arson provisions added to Title 18 in 1994. In contrast, the effect that the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act are having on habeas corpus proceedings and prisoners' actions continues to appear positive.



The trend to federalize crimes that traditionally have been handled in state courts not only is taxing the Judiciary's resources and affecting its budget needs, but it also threatens to change entirely the nature of our federal system. The pressure in Congress to appear responsive to every highly publicized societal ill or sensational crime needs to be balanced with an inquiry into whether states are doing an adequate job in these particular areas and, ultimately, whether we want most of our legal relationships decided at the national rather than local level. Federal courts were not created to adjudicate local crimes, no matter how sensational or heinous the crimes may be. State courts do, can, and should handle such problems. While there certainly are areas in criminal law in which the federal government must act, the vast majority of localized criminal cases should be decided in the state courts which are equipped for such matters. This principle was enunciated by Abraham Lincoln in the 19th century, and Dwight Eisenhower in the 20th century—matters that can be handled adequately by the states should be left to them; matters that cannot be so handled should be undertaken by the federal government.

Recently, the Commission on Structural Alternatives for the Federal Courts of Appeals, chaired by Retired Justice Byron R. White, noted that the structure and alignment of the appellate courts is affected by the volume of appeals, which is in turn driven by the jurisdiction of the federal courts. The Commission said in its *Final Report*

hat "significant changes need to be nade in the jurisdiction of the ederal courts," and emphasized the nportance of "restraint in confer- ing new jurisdiction on the federal ourts, particularly in areas tradi- onally covered by state law and erved by state courts...."

In 1995, the Judicial Conference of ne United States, after much study, dopted the *Proposed Long-Range lan for the Federal Courts* for the next entury. Recommendation 1 of the *ong-Range Plan* reads as follows: Congress should commit itself to nserving the federal courts as a istinctive judicial forum of limited risdiction in our system of federal- m. Civil and criminal jurisdiction nould be assigned to the federal ourts only to further clearly defined nd justified national interests, aving to the state courts the sponsibility for adjudicating all her matters." In accordance with is principle, the *Long-Range Plan* commends that federal courts ould only have criminal jurisdic- on in five types of cases:

- offenses against the federal government or its inherent interests;
- criminal activity with substantial multi-state or international aspects;
- criminal activity involving complex commercial or institutional enterprises most effectively prosecuted using federal resources or expertise;
- serious high level or widespread state or local government corruption; and
- criminal cases raising highly sensitive local issues.

Although Congress need not llow the recommendations of the dicial Conference, this *Long-Range an* is based not simply on the eference of federal judges, but on e traditional principle of federal- n that has guided the country roughout its existence.

Similarly, Justice White and Judge Gilbert Merritt included a separate statement in the *Final Report* of the Commission on Structural Alternatives for the Federal Courts of Appeals that describes the core functions of federal courts, the role federal courts should appropriately have in criminal matters, and the factors that should be considered before assigning new responsibilities to the federal courts. Those factors include determining whether the proposed legislation would assign work to the federal system that is within its core functions; whether states are inadequately addressing the perceived need; whether the federal courts have the capacity to take on new business without additional resources or restructuring; and the extent to which proposed legislation is likely to affect the caseload, and in turn whether the federal courts have the capacity to perform their core functions and fulfill their mandate for "just, speedy, and inexpensive determination" of actions. Other factors include the cost of delay to litigants and whether the perceived needs are, or could be, served as well by alternatives such as alternative dispute resolution or administrative proceedings.

Many others have written on how Congress might appropriately balance jurisdiction between state and federal courts. A common element of the recommended threshold standards for federal criminal legislation is remedying demonstrated state failure. Such an approach would reduce the likelihood that a particularly high profile or egregious event would be enough on its own to justify new federal laws. Such an approach also is more consistent with judicial federalism and with Alexander Hamilton's observation in the *Federalist No. 82* that "the national and State systems are to be regarded as ONE WHOLE."

A re-examination of diversity jurisdiction is also warranted. Diversity jurisdiction was originally enacted as part of the Judiciary Act of 1789 when there was reason to fear that out-of-state litigants might suffer prejudice at the hands of local state court judges and juries, and there was legitimate concern about the quality of state courts. Conditions have changed drastically in two centuries. At the very least, there simply is no need to allow in-state plaintiffs to avail themselves of diversity jurisdiction to remove matters to federal court. These lawsuits account for a substantial percentage of the federal caseload, and as state law is applied in such cases in any event, there is no good reason to keep them in federal court.

I have requested Chairman Howard Coble of the Subcommittee on Courts and Intellectual Property of the House Judiciary Committee to conduct hearings in the next session of Congress on the issue of the general expansion of federal jurisdiction caused by federalizing state crimes, and on curtailing federal diversity jurisdiction. Chairman Coble has demonstrated an interest in the federal courts' caseload and, in the most recently concluded session of Congress, sponsored the Alternative Dispute Resolution Act, which directs federal courts to provide alternatives to litigation in court and gives them flexibility in how to do so.

Judicial Salaries

For the fifth time in the past six years, Congress has denied federal judges, top officials in the Executive Branch, and its own members cost-of-living salary adjustments. Since January 1993, the value of the salaries for these positions has declined 16% when measured against the Consumer Price Index. The relative cumulative loss of purchasing power during this period for a federal district judge exceeds $77,000.

Federal judges, who have made a lifetime commitment to federal service, should not be required to bear these continuing financial penalties. The vast majority of career government employees and retirees receive inflation adjustments annually. Career employees may also receive added locality pay adjustments. Denying cost-of-living adjustments to top officials is a regressive approach to compensation and is counter-productive to the common sense goal of encouraging capable individuals to enter the Judiciary. The 1989 law providing for annual cost-of-living salary increases for these positions should be allowed to operate as intended.

Panel Attorney Compensation

Another issue of concern is the rate of pay that court-appointed attorneys receive to defend individuals in criminal cases. By statute, the Judiciary bears the responsibility for ensuring that defendants in federal criminal cases receive legal representation. If the defendant is unable to pay, the Judiciary must provide a lawyer to vindicate the defendant's rights. This responsibility is met through Federal Defender Offices, Community Defender Offices, and attorneys in private practice who are appointed by the court, generally referred to as "panel attorneys."

Congress established maximum hourly rates of compensation for panel attorneys in 1964 with the passage of the Criminal Justice Act. Since the first adjustments to those rates in 1970, the maximums have fallen far behind inflationary effects. In 1986, Congress authorized the Judicial Conference to set higher maximum hourly rates of up to $75. Since then, the Judicial Conference has approved the higher rate in 93 of 94 judicial districts upon a finding of demonstrated need. However, Congress has appropriated funds only sufficient to pay up to the $75 rate in part or all of 16 districts. In other districts, because of a one-time authorized increase, panel attorneys may only be paid $65 for in-court work and $45 for out-of-court work.

The Judiciary's budget request for fiscal year 2000 will include funds sufficient to pay all panel attorneys at the $75 rate. I respectfully urge Congress to give very serious consideration to this request. Inadequate compensation for panel attorneys is seriously hampering the ability of judges to recruit attorneys to provide effective representation. The Judiciary, in turn, is taking steps to insure that defender services' costs are reasonable.

Technological Advancements

The federal Judiciary continues to progress toward the next century with the help of technological advancements. Installation of a nationwide data communications network in the Judiciary was completed in October, one year ahead of schedule. More than 700 Judiciary sites and 28,000 Judiciary employees are now linked electronically by a secure internal electronic communications network. Similarly, the Judiciary's Internet sites are increasingly used to disseminate publications, statistics, and other information about the federal Judiciary and its programs. Use of this technology is expected to generate savings of about $1 million annually in paper and postage costs. Judicial opinions are regularly posted on the Internet in many circuits, as are schedules, local rules, fee schedules, and job vacancies. Prototype electronic case files systems which could allow courts to receive, send, store, and retrieve case-related documents in electronic format also have been developed and are being tested in a number of district and bankruptcy courts.

This year, the Administrative Office of the U.S. Courts completed a preliminary assessment of the use of courtroom technologies—video evidence presentation, videoconferencing, electronic methods of taking the record, and access to external databases—which confirmed that such technologies can, in many cases, reduce trial time and litigation costs, and improve fact-finding, jury understanding of evidence, and access to court proceedings. This year also, the Federal Judicial Center, along with the Administrative Office of the U.S. Courts and the U.S. Sentencing Commission, launched the Federal Judicial Television Network to provide some education and information to judges and staff throughout the country without the need for travel.

Information Assistance to Foreign Judiciaries

Representatives from judicial systems of countries from around the world who are engaged in reforming their systems continue to seek to learn more about our Judiciary. This year more than 500 representatives of 41 foreign judiciary systems formally visited the Supreme Court of the United States alone seeking information about our system of justice. Information was provided on topics ranging from judicial independence to judicial review, the Rule of Law, and the work of the federal courts. The International Judicial Relations Committee of the Judicial Conference also continues to play an important role in providing information and technical assistance to developing judicial systems worldwide.

Special Commissions

Commission on Structural Alternatives for the Federal Courts of Appeals

In December 1997, pursuant to a law passed by Congress creating the Commission on Structural Alternatives for the Federal Courts of Appeals, I appointed Retired Justice

Byron R. White; Judge Gilbert S. Merritt of the United States Court of Appeals for the Sixth Circuit; Judge Pamela Ann Rymer of the United States Court of Appeals for the Ninth Circuit; Judge William D. Browning of the United States District Court for Arizona; and N. Lee Cooper, former President of the American Bar Association, to serve as Commissioners. The Commission elected Justice White as Chair and N. Lee Cooper as Vice Chair. The Commission was created to study the structure and alignment of the Federal Courts of Appeals, with particular reference to the Ninth Circuit. In less than nine months, the Commission held six public hearings across the country, took testimony from 89 witnesses, and, with the assistance of the Federal Judicial Center, conducted extensive research on structural alternatives, including surveys of all district and circuit judges and a large sample of appellate lawyers. The Administrative Office of the U.S. Courts also provided valuable assistance to the Commission. On December 18, 1998, the Commission filed a comprehensive *Final Report* with Congress and the President which contains a thorough analysis of both historical and contemporary information about the federal circuit system. The Commission's recommendations are thought-provoking and should serve as a useful guide to Congress and the Judiciary for years to come. I commend the Commission for its thorough work in such a short time.

Additionally, in 1998 I appointed an Ad Hoc Committee of the Judicial Conference—chaired by Judge Wm. Terrell Hodges, and consisting of Judges William H. Barbour, Jr., Boyce F. Martin, Jr., Robert L. Miller, Jr., and Stephanie Kulp Seymour—to study certain aspects of the Federal Judicial Center's strategic plan as it related to the Administrative Office of the U.S. Courts. The Ad Hoc Committee recommended two motions to the Judicial Conference of the United States which more clearly define the judicial educational and training roles of the Federal Judicial Center and the Administrative Office of the U. S. Courts. Both motions were approved by the Judicial Conference, and the Judiciary extends its gratitude to this Committee.

The Year in Review

The Federal Courts' Caseload

For the first time in 26 years, criminal filings experienced a double-digit increase, growing by 15 percent. In 1998, filings of criminal cases grew 15 percent to 57,691 cases. This means that, on average, each authorized federal judge handles 89 criminal filings per year. Not since 1972 have the criminal filings risen by double digits. That year, filings rose 14 percent, and the courts received more immigration cases than fraud cases. Twenty-six years later, immigration filings have once again exceeded the number of fraud filings, making immigration-related offenses the second most significant offense category after drug law violations. The increase in filings related to drugs and immigration occurred primarily along the southwestern border districts, although drug-related filings rose or remained stable in more than 57 districts across the nation. Nationwide, immigration filings rose 40 percent to 9,339 cases, and drug filings rose 19 percent to 16,281 cases.

Filings in U.S. courts of appeals and U.S. bankruptcy courts also rose, by 3 percent and 5 percent, respectively. Appeals filed in the 12 regional courts of appeals rose 3 percent in 1998 to a record level of more than 53,800. The overall increase resulted from civil and bankruptcy appeals, which rose 6 percent and 4 percent, respectively. Criminal appeals remained stable, while administrative agency appeals and original proceedings dropped 14 percent and 8 percent, respectively. Although bankruptcy petitions increased from approximately 1,350,000 to more than 1,400,000, attaining a record high for the 11th consecutive quarter, the 5 percent increase represented a slowing of the double-digit growth seen in the two previous years. Filings under Chapter 7 accounted for more than 70 percent of all bankruptcies and, with a 7 percent growth, were the main cause of the continued climb in the bankruptcy numbers. Chapter 13 filings, which made up 28 percent of all bankruptcy filings, rose a modest 1 percent. Chapter 11 filings and Chapter 12 filings, each of which constitutes less than 1 percent of all bankruptcy filings, dropped 22 percent and 9 percent, respectively.

In contrast, civil filings declined 6 percent. The number of civil filings in the U.S. district courts was 256,787. The 6 percent decline in filings was attributable primarily to decreases in federal question litigation, filings involving the United States as a defendant, and diversity of citizenship filings. Federal question litigation filings dropped 6 percent from 156,596 to 146,827. The overall decline in these filings was largely a result of a 22 percent decline in personal injury cases, of which the 4,300-case decline in product liability filings (mostly breast implant cases) had the greatest effect. In addition, a significant decline in federal question litigation involved state prisoner petitions, which dropped by more than 3,200. The overall reduction in state prisoner petitions likely results from the continuing effects of the Prison Litigation Reform Act, which, among other provisions, places limitations on how prisoner petitions may be filed. Filings with the United States as defendant fell by 12 percent from 39,038 to 34,463.

This decline stemmed chiefly from a 34 percent decrease in prisoner petitions filed by federal prisoners. Motions to vacate sentence decreased 46 percent (nearly 5,400 filings), mostly as a result of the subsiding effects of the *Bailey v. United States* Supreme Court ruling, which restricted the imposition of enhanced penalties for using firearms in violent crimes or drug trafficking offenses, and the 1996 Antiterrorism and Effective Death Penalty Act, which provided a one-year limitation period for filing state habeas corpus petitions and federal motions to vacate sentence. Diversity of citizenship filings declined 6 percent (more than 3,200 cases) largely because of the drop in personal injury/product liability filings related to breast implants.

The Supreme Court of the United States — Caseload Statistics

The total number of case filings in the Supreme Court increased from 6,634 in the previous term to 6,781 in the 1997 Term—an increase of slightly more than 2.2 percent. Filings in the Court's *in forma pauperis* docket increased from 4,578 to 4,694—a 2.5 percent rise. The increase in the Court's paid docket was by only 30 cases, from 2,055 to 2,085—a 1.46 percent increase. During the 1997 Term, 96 cases were argued and 91 signed opinions were issued, compared to 90 cases argued and 80 opinions issued in the 1996 Term. No cases from the 1997 Term were scheduled for re-argument in the 1998 Term.

Administrative Office of the United States Courts

The Administrative Office of the U.S. Courts serves as the central support agency for the administration of the federal court system. The agency provides core administrative services and support in many areas and implements and promotes Judicial Conference policies and programs by issuing guidelines, standards, and procedures; providing technical assistance and training; and conducting reviews and evaluations.

The Administrative Office also prepares and submits the Judiciary's budget to Congress. This year, the Administrative Office enhanced the Judiciary's long-range planning and budgeting process to anticipate budget and program needs over the next five years. This process will strengthen the connections between project plans and budget formulation and execution processes, thereby improving the Judiciary's ability to set priorities, determine resource requirements, and implement program plans.

The agency also has been working with court staff to address computer programming issues relating to the advent of the year 2000. The Judiciary's national case management systems and software have been successfully modified and tested to ensure they are Year 2000-compliant. Agency staff are also working with individual courts to make necessary modifications to their locally developed systems.

The agency implemented a new advisory structure in 1998, streamlining how it obtains input and advice from judges, court managers, and other Judiciary employees essential to the development of policy recommendations and the deployment of useful programs, systems, and services.

As part of a report to Congress this year on the rising costs of the federal defender services programs, the Administrative Office developed a list of recommendations for containing defender service costs. Independent consultants also studied the cost, availability, and quality of appointed counsel in federal death penalty cases. Their final report made a number of recommendations to ensure that expenditures in federal death penalty cases stay within reasonable limits.

The Administrative Office completed an analysis of the federal probation and pretrial services system's home confinement program, which monitors non-violent federal offenders and defendants in their homes on a daily basis as an alternative to pretrial detention or post-conviction incarceration. The findings demonstrated that home confinement is both a successful and cost-effective alternative. The estimated average daily cost of federal custody in 1997 was $64.32, while the estimated average daily cost of home confinement supervision was $17.98.

The Administrative Office received two awards for excellence this year. In recognition of the Judiciary's long-range facilities planning process used to forecast space requirements for the federal courts, the agency received the General Services Administration's 1998 Annual Achievement Award for Real Property Innovation. It also received the National Performance Review's "Hammer Award," which recognizes efforts to help build a federal government that works better and costs less, for a collaboration with the Department of Veterans Affairs resulting in reduced costs for office supplies for Judiciary and Department of Veterans Affairs' offices nationwide.

The Federal Judicial Center

The Federal Judicial Center improves the operation of the federal courts through research and education. This April, the FJC began operation of the Federal Judicial Television Network, which broad-

asts education and information to nore than 200 court sites with atellite receiving equipment in-talled by the Administrative Office. The Judiciary's broadcasting net-work is the second largest in the ederal government, behind only the ocial Security Administration. By nuary 1999, the Network will roadcast more than 500 hours of rogramming, including 39 pro-rams that the FJC produced specifi-lly for the network.

Appropriately, Congressman larold Rogers of Kentucky intro-uced the FJC's first broadcast. hairman Rogers believes strongly "distance education"—providing ducation without the money and me that travel requires. So does the C. Last year, over three-fourths of e 30,000 participants in its educa-on programs used distance educa-on technologies including but not nited to the Network.

Technology and science also fluence the substance of FJC lucation because they affect the igation process. Satellite broad-sts show probation officers how fenders under supervision may be ing the Internet illegally and lped judges handle evidentiary oblems created by the use of mputer simulations to recreate ents.

At the request of a Judicial nference committee, the FJC is aluating whether panels of experts pointed by judges in the breast plant litigation might be appro-iate for other types of litigation. It working with the American sociation for the Advancement of ience and the National Academy Sciences to help federal judges no want to call on the scientific mmunity for assistance with entific evidence. The FJC is eparing a new edition of its *ference Manual on Scientific Evi-ice* to help judges exercise their entific evidence "gatekeeping" e, and it has provided research and analysis for the Mass Tort Working Group that I appointed last year to assess the seemingly intractable problems posed by mass tort litigation. In anticipation that judges will benefit from additional advice in this area, I have appointed a new Board of Editors, chaired by Judge Stanley Marcus of the Center's Board, to work with the FJC on revisions to its *Manual for Complex Litigation*.

These efforts are only part of the FJC's much broader offerings that orient new judges and court staff, analyze legislative and case law developments that affect their work, hone skills of court and case management, and inform all members of the Judicial Branch of their obligations under the codes of conduct and ethics statutes that govern them.

The United States Sentencing Commission

In the absence of Commissioners, the Commission staff has continued its work on tasks such as developing policy options to implement recent amendments in criminal statutes and to further previously established priorities; providing training and technical assistance to the criminal justice community; preparing the fiscal year 1998 annual report and sourcebook of federal sentencing statistics; conducting sentencing-related research; and serving as a clearinghouse for federal sentencing information.

In January 1998, the Sentencing Commission published for comment a number of proposed amendments implementing broad changes in the guidelines covering theft, fraud, and other economic crimes and addressing issues relating to telemarketing fraud, congressional initiatives, and proposals to eliminate conflicts among circuits. Subsequently, three public hearings were held to receive comments on the proposed amendments.

On May 1, 1998, when some Commissioners remained in office, the Sentencing Commission sent to Congress 11 sentencing guideline amendments, which took effect November 1, 1998. Several of these amendments resolved conflicting appellate court interpretations. The Commission also adopted an amendment providing for increased punishment in fraud cases involving mass marketing or sophisticated concealment techniques, crimes that impact large numbers of vulnerable victims. The sophisticated concealment amendment was modified by additional guideline amendments adopted by the Commission in September in response to the Telemarketing Fraud Prevention Act of 1998. Commission research staff estimates the combined effect of the amendments will be to increase sentences in telemarketing fraud cases from a current average of 21 months to a minimum of 33 months, representing an approximate 57 percent increase.

Throughout 1998, Commission staff continued to include as one of its top priorities the systematic study and analysis of the guidelines for fraud, theft, and tax offenses. Additionally, in advancing the Commission's research and information dissemination agenda, Commission staff in the fall presented a number of papers at the Annual Meeting of the American Society of Criminology. Topics included computer offense conduct, immigration offenses, methamphetamine offenses, and sentencing guidelines for juveniles. In 1998, the Commission received documentation on more than 50,000 cases in which sentences were imposed under the guidelines and trained approximately 2,400 individuals at 44 training sessions, including ongoing programs sponsored by the Federal

Judicial Center and the Department of Justice.

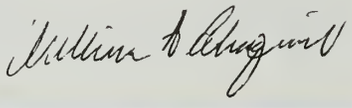
While the staff has been able to carry on its routine functions, the Commission needs commissioners to develop necessary guideline amendments to implement legislation, address circuit conflicts in guidelines interpretation, and remedy any other application concerns.

In Memoriam

This year, the Judiciary lost a friend and colleague, and the nation lost a distinguished servant, when Lewis F. Powell passed away on August 25. Justice Powell was appointed to the Supreme Court by President Richard M. Nixon in December 1971. He took the oath of office in January 1972 and served for more than 15 years before retiring in 1987. A true patriot and public servant, he practiced law before volunteering to serve in the Air Force in World War II and again before accepting the appointment to the Supreme Court. Lewis Powell was a warm, good man of uncommon influence, personal grace, and fair-mindedness. He endeared himself to all who worked with him, and he will be greatly missed.

Conclusion

As we prepare to complete the work of this millennium and embark upon the next, the Judiciary may take a fair measure of satisfaction in that, despite the challenges we face, the United States court system continues to serve as a global standard of excellence. We must dedicate ourselves to maintaining the splendid tradition of our Judiciary, and to preserving a proper balance with the other branches of government and the states as we continue to work together.



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MAR 05 1999

FEDERAL DEPOSIT...

Judiciary Takes Dual Budget Hits

Former White House Counsel Abner Mikva, Judge Richard Arnold (8th Cir.), Judge John Heyburn (W.D. Ky.), Judge Norman Stahl (1st Cir.), Judge David Hansen (8th Cir.), and AO Director Leonidas Ralph Mecham met with White House and OMB leadership in late December to discuss the Judiciary's concerns.

Budget Includes Negative Allowance for Judiciary, Nixes Court Construction Funds

The President has decided to propose a "negative allowance" in his fiscal year 2000 budget submission to Congress, which will be applied to the Judiciary's budget request. This occurs despite a projected budget surplus of over $76 billion, a statutory requirement that the Judiciary's budget be transmitted to Congress "without change," and a meeting initiated by federal judges and Administrative Office Director Leonidas Ralph Mecham to present the Judiciary's concerns to the White House Chief of Staff and the head of the Office of Management and Budget (OMB).

In addition, for the third consecutive year the Administration has struck funds for federal courthouse construction from the budget. The FY 2000 budget submitted by the Executive Branch will not ask Congress to provide funds for the General Services Administration (GSA) to construct new courthouse facilities.

In mid-December 1998, Mecham, Judge David Hansen, chair of the Judicial Conference Committee on the

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106th Congress Finalizes Committees

The 106th Congress named committee chairs and members early in the first session, the ratio of Democrats to Republicans on key committees reflecting a slight gain by Democrats in the November elections. Most committee chairs and ranking minority members remained the same on the committees dealing with Judiciary-related business. One change was the naming of Representative Bill Young (R-FL) as chair of the House Committee on Appropriations, replacing Bob Livingston (R-LA).

With other business to consider, both the House and Senate have been slow to complete subcommittee rosters. The following are the committee members for both the Senate and House Appropriations and Judiciary Committees. New committee members are indicated in italics.

Senate Appropriations Committee

Ted Stevens, R-AK, chairman
Thad Cochran, R-MS
Arlen Specter, R-PA
Pete V. Domenici, R-NM
Christopher S. Bond, R-MO
Slade Gorton, R-WA
Mitch McConnell, R-KY
Conrad Burns, R-MT
Richard C. Shelby, R-AL

*See **Committees** on page 3*

Budget continued from page 1

Judicial Branch; Judge Norman Stahl, chair of the Committee on Security and Facilities; Judge John Heyburn, chair of the Budget Committee; Judge Richard Arnold, and former judge and White House Counsel Abner Mikva met with President Clinton's Chief of Staff John Podesta and OMB Director Jack Lew. Ostensibly, the meeting was to discuss the entire Judiciary budget, but three issues were of prime importance: a salary adjustment for federal judges, a reminder that the President was required to submit the Judiciary's FY 2000 budget unchanged, and funding for construction of new court buildings. The Administration was sympathetic to the inequities caused by the absence of cost-of-living adjustments for federal judges over five of the last six years. On the topic of funding for courthouses and the Judiciary's FY 2000 budget, however, there was little empathy. OMB's Lew cited the impact of discretionary budget caps and the need to fund Presidential priorities as the driving factors in OMB's proposals affecting the Judiciary budget and courthouse construction. Quite clearly the needs and priorities of the Judiciary are not shared by the Administration. This was reflected when, on February 1, the budget was submitted with the negative allowance and without courthouse funding. OMB, which does not review the Judiciary budget request, is of the mistaken opinion that our FY 2000 request is excessive in comparison to Executive Branch requests.

Courthouses Affected by the FY2000 Budget

Los Angeles, CA	Site & Design
Seattle, WA	Construction
Richmond, VA	Site & Design
Biloxi, MS	Construction
Washington, DC	Construction
Buffalo, NY	Site & Design
Miami, FL	Construction
El Paso, TX	Site & Design
Mobile, AL	Site & Design
Norfolk, VA	Site & Design
Las Cruces, NM	Site & Design
Salt Lake City, UT	Construction
Rockford, IL	Site & Design
Cedar Rapids, LA	Site & Design
Nashville, TN	Site & Design
Erie, PA	Construction
Savannah, GA	Construction

Negative Allowance Against Judiciary

The Administration is required by 31 U.S.C. § 1105 (b) to include in the fiscal year budget the judicial branch's request "without change." OMB has circumvented this law by including in the budget request a recommendation that the overall budget be reduced by a certain amount, or a "negative allowance," and then informally recommending to Congress that reductions be made in the Judiciary's budget to cover the negative allowance. OMB has attempted to include negative allowances in four other fiscal year budgets, and was successful only the first time in FY 1990. Each succeeding time, after discussion by former Budget Committee chair, Judge Richard Arnold, with the President, the Judiciary's budget request was submitted without change. The informal understanding between the branches has been based upon the Judiciary's successful efforts to impose cost-saving measures and efficiencies, and to hold down budget requests. (For the story on the Judiciary's on-going efforts to cut costs and maximize resources, see page 6.) "The Judiciary has kept faith with the Administration by asking only for what is needed to maintain services," said Mecham. "Any increase we have requested helps the Judiciary keep pace with expanding federal caseloads and the added workload for probation and pretrial services. So by substantially reducing our budget, the Administration is curtailing the anti-crime and other services we will be able to provide."

Ultimately, it is up to Congress and not the Administration, to determine Judiciary funding. Heyburn and Mecham with AO staff will be working over the next month to undo the damage done by OMB. In addition, legislation is being considered to strengthen the prohibition against executive branch interference in the Judiciary's budget.

Courthouse Funds Nixed

In a letter written recently on behalf of the Judicial Conference to leadership in the House and Senate, Mecham also argued the desperate need for new and expanded courthouses. He made the point that not only has the caseload in the federal courts increased tremendously, the number of judges and staff has expanded to handle the workload. However, the majority of existing court facilities were built 50 years ago and are not only showing their age, they cannot be modified easily to accommodate staff, additional courtrooms, the new electronic technology that contributes to better case management, or even the increased security measures that are now part of public life. Mecham noted GSA support for timely construction of the new and expanded courthouses. "GSA estimates that construction costs increase an average of 3-4 percent for each year of delay," wrote Mecham, "and the costs of scarce urban sites are expected to increase even more dramatically. For each construction project, GSA performed an economic analysis, which determined that building was more cost-effective than leasing additional space. In

*See **Budget** next page*

Committees continued from page 1

Ted Stevens, R-AK

Appropriations Committee continued

Judd Gregg, R-NH
Robert Bennett, R-UT
Ben Nighthorse Campbell, R-CO
Larry Craig, R-ID
Kay Bailey Hutchison, R-TX
Jon Kyl, R-AZ

Robert C. Byrd, D-WV, ranking minority member
Daniel K. Inouye, D-HI

Robert C. Byrd, D-WV

Ernest F. Hollings, D-SC
Patrick J. Leahy, D-VT
Frank R. Lautenberg, D-NJ
Tom Harkin, D-IA
Barbara A. Mikulski, D-MD
Harry Reid, D-NV
Herb Kohl, D-WI
Patty Murray, D-WA
Byron Dorgan, D-ND
Dianne Feinstein, D-CA
Richard Durbin, D-IL

Senate Judiciary Committee

Orrin G. Hatch, R-UT, chairman

Orrin G. Hatch, R-UT

Strom Thurmond, R-SC
Charles Grassley, R-IA
Arlen Specter, R-PA
Jon Kyl, R-AZ
Mike DeWine, R-OH
John Ashcroft, R-MO
Spencer Abraham, R-MI
Jeff Sessions, R-AL
Robert C. Smith, R-NH

Patrick J. Leahy, D-VT, ranking minority member

Patrick J. Leahy, D-VT

Edward Kennedy, D-MA
Joseph Biden, D-DEL
Herb Kohl, D-WI
Dianne Feinstein, D-CA
Russell Feingold, D-WI
Robert Torricelli, D-NJ
Charles E. Schumer, D-NY

House Committee on Appropriations

C.W. Bill Young, R-FL, chairman
Ralph Regula, R-OH
Jerry Lewis, R-CA
John Edward Porter, R-IL
Harold Rogers, R-KY
Joe Skeen, R-NM
Frank R. Wolf, R-VA
Tom DeLay, R-TX
Jim Kolbe, R-AZ
Ron Packard, R-CA
Sonny Callahan, R-AL
James Walsh, R-NY
Charles H. Taylor, R-NC
David L. Hobson, R-OH
Ernest J. Istook, Jr., R-OK

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leased facilities, the courts end up paying a high commercial rent and a subsidy to GSA for new building and are forced into inadequate space, and the federal government has no asset as a result of its expenditure."

The lack of funding for courthouses in the FY 2000 budget is perplexing in light of the many steps urged by Congress that the Judiciary and GSA have taken to prioritize planning of courthouse construction, to initiate major economies in construction and design, including a comprehensive review of the *U.S. Courts Design Guide*, and to increase the efficiency of new courthouses through policies on courtroom sharing by visiting and senior judges.

In the coming months, Stahl and Mecham will mount a campaign similar to the one waged successfully last year to obtain necessary courthouse funding. Legislation also is being discussed that will allow the judicial branch to seek funds itself for these critical projects instead of relying on the executive branch.

New Law Authorizes ADR In All District Courts

Most Provisions Anticipated by Federal Courts

The Alternative Dispute Resolution Act of 1998 (P.L. 105-315) was signed into law by the President at the end of October. The new law requires district courts to have an ADR program, but how that program is structured is left up to the individual courts, and in fact, most courts already meet the new law's requirements.

■ *Each district court is required to implement its own ADR program and to authorize the use of at least one form of ADR. Forms of ADR include but are not limited to mediation, early neutral evaluation, minitrial, and voluntary arbitration*

The Judicial Conference has long supported the use of voluntary ADR by district courts. Recommendation 39 of the *Long Range Plan for the Federal Courts* encouraged district courts to "make available a variety of alternative dispute resolution techniques, procedures, and resources to assist in achieving a just, speedy, and inexpensive determination of civil litigation." In the district courts, the first mediation and arbitration programs date from the 1970s. According to a 1996 resource guide by the Federal Judicial Center and the CPR Institute for Dispute Resolution, mediation programs are the most common with arbitration as the second most frequently authorized ADR program. Nearly 80 district courts have authorized or established at least one court-wide ADR program. Almost all courts, even those with no formal ADR programs, frequently use district judge- or magistrate judge-hosted settlement conferences.

■ *Each district court is required to adopt local rules requiring litigants in civil cases to consider the use of an ADR process and providing for the confidentiality of ADR processes.*

Many local court rules already require attorneys to discuss ADR options with their clients. In the initial case management conference, attorneys may also be expected to help determine, with the judge, whether ADR would be effective in the case, and, if so, what type of ADR process. A number of courts provide brochures on ADR at filing to help parties learn about their options.

■ *Districts may exclude cases or categories of cases that would not be appropriate for ADR.*

The Act recognizes that there may be cases or types of cases that are not suitable for ADR. Districts have the flexibility to exclude these cases from the ADR process.

■ *Each district is required to designate an employee or judicial officer to oversee its ADR program.*

Nearly a dozen courts have ADR administrators or directors whose full-time responsibility is to manage and monitor the ADR programs, and others have assigned these duties to the clerk's office staff. In some courts, magistrate judges run successful ADR programs.

■ *All districts, if they so desire, are now allowed to use voluntary arbitration as a form of ADR in cases where damages do not exceed $150,000. Only those districts that were previously authorized to conduct mandatory arbitration are still permitted to do so.*

The new Act permits all courts, if they so wish, to establish voluntary arbitration programs for cases where damages do not exceed $150,000. However, mandatory arbitration programs are still limited to those courts that were previously authorized under the Judicial Improvements and Access to Justice Act of 1988, P.L. 100-72.

New Member Named to Executive Committee

Chief Justice William H. Rehnquist has named Chief Judge Edward R. Becker (3rd Cir.) to the Executive Committee of the Judicial Conference. Becker replaces Judge Henry A. Politz (5th Cir.), who recently stepped down as chief judge of the Fifth Circuit.

The eight-member Executive Committee, chaired by Judge Wm. Terrell Hodges (M.D. Fla.), acts on behalf of the Conference between regular meetings held in March and September. The Committee also reviews the jurisdiction of Conference committees, reviews and approves the Judiciary's annual financial plans, prepares proposed discussion and consent calendars for Conference meetings, and establishes and publishes procedures for assembling agendas and schedules of events in preparation for Conference sessions.

Chief Judge Edward R. Becker (3rd Cir.)

lew AO Chiefs Named

Two new chiefs have been named head divisions at the Administrative Office: Michael W. Dolan in the rticle III Judges Division and obert Lowney in the District Court dministration Division.

Dolan was previously deputy ief of the Article III Judges divion, a position he has held since 94. From 1985 to 1994, he worked ith the Washington office of inthrop, Stimson, Putnam & oberts, a Wall Street law firm. From 71 to 1985, he held positions in the ffice of Legislative Affairs of the epartment of Justice. During the st six years with the Department, served as career Deputy Assistant torney General for Legislative ffairs.

Joining Dolan in April will be his w deputy chief, Bob Wily, previsly clerk of the bankruptcy court the Eastern District of Virginia.

The Article III Judges Division dresses the needs and concerns of dges through the operations of the dicial Compensation and Benefits anch, which handles payroll and rsonnel for all judges, along with veral retirement systems and the nancial Disclosure Office, which nually processes over 3,000 reports submitted by judges and staff, and through assistance to the Judicial Conference committees dealing with financial disclosure, international relations, and intercircuit assignments. The division also is responsible for the orientation to the AO of new chief judges and the introduction to the federal court system of individuals nominated to Article III judgeships.

Michael W. Dolan

Robert Lowney

Lowney, the new chief of the District Court Administration Division (DCAD), has been involved in clerk of court issues since his arrival at the AO in 1988. Before joining the AO, he was deputy clerk in the U.S. District Court for the District of Columbia and in the Northern District of California. He began at the AO as a program specialist in the Court Administration Division, then served as special assistant to the division's chief. When the division was reorganized, Lowney was appointed special assistant for court administration to the Assistant Director, Office of Court Programs. In addition to his new responsibilities, Lowney will continue his role as Deputy for Court Administration in the Office of Court Programs, a position he has held since 1995.

DCAD's support of district courts, includes the allocation of staffing and other resources, the management of projects such as the deployment of a new case management system with electronic filing capability, the jury management system, and programs such as court reporting and interpreting. The division also helps support three Judicial Conference committees, the Judicial Resources Committee, the Committee on Court Administration and Case Management, and the Committee on Automation and Technology.

FJTN in March

The Judiciary's internal broadasting network, the Federal udicial Television Network (FJTN) s already the second-largest etwork of its kind in the federal ivilian government. Judiciary mployees can access programs on verything from the impact of the ew ADR Act to how WordPerfect orks. March brings a special eport on Y2K, with the first howing on March 1. On March 16, here's a live show on the Judiciary enefits Initiative, using viewer response systems. Airing every Monday and Tuesday, this month's *In Camera* features a conversation with Judge Norman Stahl (1st Cir) on courthouse construction. And throughout the month News Breaks keeps you up to date on news from the Hill and around the country affecting the Judiciary. For the latest schedule check the Judiciary's J-Net at http://156.132.47.230/docs/EDUPROG/Calendar.html and the insert in this month's *Third Branch* newsletter.

Judiciary Makes the Most of Resources Now—and For The Millennium

Working effectively and cost efficiently may be the Judiciary's watchwords as it nears the millennium. In its third yearly *Report to Congress on the Optimal Utilization of Judicial Resources*, submitted this month, the Judiciary outlines still more initiatives to improve the workings of the Judiciary and enhance services, while using its appropriated dollars economically. The full report is available on the Judiciary's website at www.uscourts.gov.

Throughout 1998, with additional projects slated for 1999 and 2000, the Judiciary has been improving methods of determining court staffing and judicial officer requirements; reviewing the space planning and acquisition program; improving management of defender services program resources; improving the efficiency and effectiveness of the probation and pretrial services system; enhancing the quality and efficiency of court proceedings; creating efficiencies by automating labor intensive work processes; enhancing services to court system users; reducing meeting, training, and communications costs; improving the capabilities of court employees through training; and enhancing long-range planning and budgeting efforts.

The following is a sampling of the Judiciary's work in progress:

■ A two-year study will update formulas for determining staffing requirement in the courts. The new formulas will be used to allocate court staff resources beginning in fiscal year 2001 and to estimate personnel requirements beginning with the FY02 budget request.

■ Over the next several years, the Judiciary plans to include some level of courtroom technology—including video evidence presentation systems, videoconferencing capabilities, electronic court-reporting systems—in every new construction and renovation project. The technologies can reduce trial time, lower litigation costs, improve fact-finding, enhance understanding of information and improve access to court proceedings.

■ District courts with a level of prisoner civil rights case filings above the national average will have videoconferencing capabilities. At the end of FY98, 35 district courts were using videoconferencing for these cases, and the program will expand to eight more locations by the end of FY99 and nine more locations by the end of FY2000.

■ Digital audio technology will be introduced in six district and bankruptcy courts to take the official record of court proceedings. Following assessment of the technology, the Judiciary will determine whether to designate the technology as an official method of taking the court record.

■ Telephone interpreter services—court interpreter services from a remote location by phone—will be available to courts at six sites, and plans are in the works to expand the program over the next two years. The program is used in proceedings such as pretrial hearings, initial appearances, arraignments, motion hearings, and probation and pretrial services interviews.

■ An electronic case filing system is currently being tested in nine district and bankruptcy courts. Electronic filing could improve service through more accurate up-to-date records, and quicker, easier access to documents by the public.

■ The bankruptcy Public Access to Court Electronic Records (PACER) system will be upgraded to allow 24-hour real-time access to a court's database of publicly available records. The upgrade also will allow courts to maintain several years of data on-line. It is being tested in 15 courts with full distribution expected early in 1999.

■ Individual courts are being encouraged with grants to find more ways to increase public access to records.

■ The Internet could give the public electronic access to court information. Nearly 100 courts now use the Internet to post filing instructions, jury instructions, court calendars and directions. Transmitting bankruptcy notices through the Internet will make the service more practical for smaller creditors and bankruptcy practitioners, as well as cheaper than paper noticing.

■ Automating the collection of magistrate judge statistics will capture data automatically during docketing, eliminating manual data entry, facilitating data analysis, and producing a uniform reliable way to collect data on the duties and workloads of magistrate judges and on cases in district courts.

■ Start-up of PACTS, a nationwide case management system, will provide electronic storage and retrieval of most probation and pretrial services reports and records, as well as defendant/offender imaging.

■ Mobile computing will increase the productivity of probation and pretrial services officers on supervision and investigation activities. The Judiciary completed a two-site study on its use in April 1998, and found it makes information more accessible and data entry more efficient.

■ A new jury management system will soon go nationwide. The new

March 1999 Program Calendar for The Federal Judicial Television Network

All times are Eastern Standard Time

The ADR Act of 1998: What It Means for the Courts
March 17, 12:00, 1:00, 3:00 p.m.

Assessing Training Needs: Designing Surveys that Work
March 11, 10:00; 12:30 p.m. (live)

Citibank Travel & Purchase Card Update
March 8, 9:00 a.m., 3:00 p.m.; March 19, 4:00 p.m.; March 23, 3:30 p.m.; March 30, 1:30 p.m.

Civil Service Retirement System
March 8, 1:00 p.m.; March 16, 11:30 a.m.; March 23, 11:30 a.m.; March 29, 1:00 p.m.

Court Personnel System (court employees)
March 1, 12;30 p.m.; March 15, 1:00 p.m.

Court Personnel System (judges)
March 1, 1:00 p.m.; March 9, 4:00 p.m.; March 15, 1:30 p.m.; March 23, 11:00 a.m.

EEOC Chairman Speaks for Asian and Pacific Island Heritage Week
March 2, 3:30 p.m.; March 16, 3:00 p.m.; March 19, 1:00 p.m.; March 22, 11:30 a.m.; March 29, 11:00 a.m.

Electronic Records Management
March 1, 11:30 a.m.; March 2, 9:00 a.m; March 5, 12:00 p.m.; March 16, 8:30 a.m.; March 19, 9:30 a.m.; March 22, 3:30 p.m.; March 29, 4:00 p.m.; March 30, 12:30 p.m.

Federal Employees Retirement System (FERS)
March 1, 3:00 p.m.; March 5, 3:30 p.m.; March 8, 10:00 a.m.; March 22, 10:00 a.m.; March 23, 2:00 p.m.; March 29, 2:30 p.m.

In Camera: Marching Toward Justice
Every Monday at 8:30 a.m.; every Tuesday at 4:30 p.m.

Information Technology Project Management: Why It's Important to You
March 2, 3:00 p.m.; March 9, 1:30 p.m.; March 30, 10:00 a.m.

Introduction to the Judiciary Benefits Initiative Part One:
March 1, 2:30 p.m.; March 2, 12:30 p.m.; March 5, 8:30 a.m., 1:00 p.m.; March 9, 11:00 a.m.; March 15, 4:00 p.m.; March 29, 9:00 a.m.; March 30, 2:30 p.m.

Part Two: Legislative Authority
March 16, 1:00 p.m., March 22, 4:30 p.m.; March 23, 8:30 a.m.; March 29, 10:00 a.m.; March 30, 3:30

Judge Jose A. Cabranes Speaks for Hispanic-American Heritage Week
March 1, 2:00 p.m.; March 9, 1:00 p.m.; March 23, 9:30 a.m.

Judge Ruth Bader Ginsburg Speaks for Women's Heritage Week
March 1, 1:30 p.m.; March 9, 12:30 p.m.; March 16, 11:00 a.m.

Leadership 2000: Module 1
Basic Principles for a Collaborative Workplace
Class Three: March 25, 1:00 p.m.
Class Four: March 26, 1:00 p.m.

Managers as Mentors (PBS rebroadcast)
March 10, 1:00 p.m.

Overview of Sex Offenders in the Federal System
March 4, 1:00 p.m.

Pedophiles Who Use the Internet
March 12, 1:00 p.m.

Preventing Discrimination Against People with Disabilities
March 15, 2:00 p.m.; March 19, 2:00 p.m.; March 30, 10:30 a.m.

Probation/Pretrial Leadership Development Program Orientation and Overview
March 18, 12:00 p.m.

Security for Judiciary Computer Users
March 1, 10:30 a.m.; March 2, 11:30 a.m.; March 8, 3:30 p.m.; March 15, 12:00 p.m.; March 19, 8:30 a.m.; March 22, 9:00 a.m.

Space and Facilities Courthouse Projects Program A
March 5, 9:30 a.m.; March 9, 8:30 a.m.; March 15, 9:00 a.m.; March 19, 10:30 a.m.; March 23, 1:00 p.m.
Program B
March 1, 9:00 a.m.; March 5, 10:30 a.m.; March 9, 9:30 a.m.; March 15, 10:00 a.m.; March 16, 2:00 p.m.; March 19, 11:30 a.m.; March 22, 2:00 p.m.

Special Report: Y2K
March 1, 4:30 p.m.; March 5, 2:00 p.m.; March 8, 2:30 p.m.; March 9, 12:00, 2:00 p.m.; March 23, 10:00 a.m.; March 29, 12:00 p.m.

Technology and Human Resources: Are You Keyed Up?
March 2, 10:00 a.m.; March 8, 11:30 a.m.; March 22, 12:30 p.m.; March 20, 8:30 a.m.

Ticket to Ride: Travel Regulations for Court Personnel

CALENDAR DATES FOR THE THIRD BRANCH

Vol. 31 Number 2 February 1999

MARCH

15-17 **Monday-Wednesday**
Video Orientation for Newly Appointed Magistrate Judges

16-17 **Tuesday-Wednesday**
Judicial Conference of the United States

APRIL

6 **Tuesday**
Federal Circuit Conference

6-8 **Tuesday-Thursday**
National Workshop for Bankruptcy Judges

12-13 **Monday-Tuesday**
Advisory Committee on Evidence Rules

14-16 **Wednesday-Friday**
Workshop for Court of Appeals Judges

15-16 **Thursday-Friday**
Advisory Committee on Appellate Rules

19-20 **Monday-Tuesday**
Advisory Committee on Civil Rules

22-23 **Thursday-Friday**
Advisory Committee on Criminal Rules

28-May 1 **Wednesday-Saturday**

THE THIRD BRANCH

Vol. 31 Number 2 February 1999

COURT ADMINISTRATOR/CLERK OF COURT, Eastern District of Michigan

Applications are being accepted for the position of court administrator/clerk of court in the District Court for the Eastern District of Michigan. A bachelor's degree and a minimum of 10 years of progressively responsible administrative experience in managing an organization is required. Three of the 10 years' experience should be in a position with substantial management responsibility. A master's degree in public, business, or judicial administration is preferred, as well as management experience in a federal or state clerk's office and a strong background in automation. Interested applicants should send a cover letter and resume to John P. Mayer, Court Administrator/ Clerk, U.S. District Court, 814 Theodore Levin U.S. Courthouse, Detroit, MI 48226. **Application deadline: Close of business March 19, 1999.**

CHIEF PROBATION OFFICER, Western District of Wisconsin

Applications are being accepted for the position of Chief Probation Officer in the District Court for the Western District of Wisconsin, Madison. Salary: up to JSP 16 ($92,844 to $117,198). A bachelor's or master's degree in social sciences, criminal justice, public administration or related field(s), or a law degree is required as well as a minimum of eight years of progressively responsible administrative, technical, and managerial experience. First-time appointees to positions covered under law-enforcement officer retirement provisions must not have reached their 37th birthday at the time of appointment. Candidates must have a performance history that demonstrates proven skill in managing limited resources against multiple demands, strong organizational prioritizing and problem solving skills, and solid oral and written communication skills. Submit a cover letter with a detailed resume of qualifications and experience, including salary history, letters of reference (both professional and personal), and other materials to support the qualifications to Chief Judge John C. Shabaz, RE: Chief Probation Officer Vacancy, U.S. Courthouse, 120 North Henry Street, Room 560, Madison, WI 53703. **Application deadline: April 23, 1999.**

CHIEF DEPUTY CLERK, Seventh Circuit, Chicago, Illinois

The Seventh Circuit seeks applicants for the position of chief deputy clerk. A senior-level position reporting to the clerk, the chief deputy clerk assists the clerk with management, supervision, and administrative operation of the circuit clerk's office. Completion of an undergraduate degree from an accredited university is required. A post-graduate degree in judicial or public administration, business, political science, or a related field is desirable and a law degree is highly desirable. Applicants should have a minimum of six years of progressively responsible managerial or administrative experience, three of which must have involved substantial management responsibility, preferably in an appellate or federal court environment. Salary range: JSP 15/1 ($82,235) to JSP 16/10 ($121,748) depending on qualifications. Send a cover letter, detailed resume of qualifications and experience with salary history, and list of three professional references to Gino J. Agnello, Clerk, U.S. Court of Appeals for the Seventh Circuit, 219 South Dearborn Street, Room 2710A, Chicago, IL 60604, Ref: Chief Deputy Position. A copy of the announcement and position description is available upon request (312/435-5513). **Application deadline: March 1, 1999, or until filled.**

SUPERVISING ATTORNEY, Fifth Circuit

Applications are invited for the position of Supervising Attorney in the Fifth Circuit, Court of Appeals. The successful applicant recommends changes to and drafts guides for court procedures and rules; interprets and advises clerk's office staff on various legal matters; and manages a staff of employees in accomplishing mission critical goals. A law degree is required, with six years of progressively responsible legal experience; advanced understanding of appellate rules and interpersonal skills. A knowledge of the federal court ICMS system and/or appellate version AIMS and two years supervisory/managerial experience is desired. Salary: $63,332-$102,907. Send resume with salary history to the Fifth Circuit, U.S. Court of Appeals, 600 Camp Street, Room 246, New Orleans, LA 70130. **Application deadline: February 26, 1999, or until filled.**

EQUAL OPPORTUNITY EMPLOYERS

system promises to modernize and standardize current processes—including in-house jury selection, management, and tracking—for managing juries in district courts, reducing or eliminating inefficient, time-consuming manual work and rising vendor support costs.

■ More use of videoconferencing is planned for administrative meetings, conferences, and training seminars. As of January 1999, videoconferencing capabilities were installed in 85 court locations, with more district courts interested in acquiring the technology.

■ Opportunities for distance learning are being pursued with plans to include interactive video teletraining, computer-based training, and desktop videoconferencing. The Judiciary currently broadcasts to courts over 20 hours weekly on retirement benefits, procurement, human resource management, and travel regulations. The Judiciary reduced its travel budget request by $1 million in FY99 in anticipation of savings generated by distance learning programs.

■ With the completion of the Data Communications Network in September 1998, the Judiciary now has an internal electronic communications link for all Judiciary employees. The DCN means easy sharing of case information, opinions, and e-mail, and provides an infrastructure for Judiciary-wide software and communication and financial systems.

■ A comprehensive study of the Judiciary's space and facilities program will be completed in FY 2000. The study should produce recommendations to further improve planning processes and reduce future costs.

■ Taking the initiative to contain the cost of defender services, the Judicial Conference approved the recommendations of the report, *Federal Death Penalty Cases: Recommendations Concerning the Cost and Quality of Defense Representation*, and the Judiciary continues to implement the recommendations including in the January 1998 *Report on Costs and Recommendations for the Control of Costs of the Defender Services Program*. While concluding that "overall, the average cost of representation is reasonable in relation to the obligations imposed on defense counsel and the costs of prosecuting such cases," the report offered numerous steps to keep expenditures in these cases within limits. In early FY99, courts and counsel were notified about and encouraged to comply with these recommendations.

■ The Judiciary also is examining the reasons for the disparity on representation costs in federal capital habeas corpus cases among districts and circuits, including a comprehensive statistical analysis of private panel attorney costs, in a March 1999 report to Congress.

■ To improve management of the panel attorney program, the Judiciary is starting a new payment and management information system that promises a more efficient means of collecting additional, more timely, and better quality data.

Administrative Office Hosts Summit on Judges' Pay Freeze

Last month, the Administrative Office hosted a meeting, chaired by Judge David R. Hansen, to discuss the problem of the pay freeze, which has eroded the real salaries of high-level officials in all three branches of government. Participants discussed solutions to the problem of pay, as well as how to coordinate activities to increase the salaries of judges, members of Congress, and top executive branch officials.

In attendance were representatives from the Federal Judges Association, the National Conference of Bankruptcy Judges, the Federal Magistrate Judges Association, the American Bar Association, the American College of Trial Lawyers, the American Judicature Society, the Federal Bar Association, the National Bar Association, and the Senior Executives Association.

JUDICIAL MILESTONES

Appointed: Richard M. Berman, as U.S. District Judge for the Southern District of New York, November 23.

Appointed: Edward J. Damich, as Judge, U.S. Court of Federal Claims, December 1.

Appointed: Nancy B. Firestone, as Judge, U.S. Court of Federal Claims, December 4.

Appointed: Donovan W. Frank, as U.S. District Judge for the District of Minnesota, November 2.

Appointed: Alvin K. Hellerstein, as U.S. District Judge for the Southern District of New York, November 30.

Appointed: Robert S. Lasnik, as U.S. District Judge for the Western District of Washington, December 2.

Appointed: Norman A. Mordue, as U.S. District Judge for the Northern District of New York, December 4.

Appointed: Jeanne E. Scott, as U.S. District Judge for the Central District of Illinois, November 30.

Appointed: Margaret B. Seymour, as U.S. District Judge for the District of South Carolina, October 30.

Appointed: Aleta Arthur Trauger, as U.S. District Judge for the Middle District of Tennessee, December 1.

Elevated: Judge R. Allan Edgar, to Chief Judge, U.S. District Court for the Eastern District of Tennessee, succeeding James H. Jarvis, November 24.

Elevated: Judge Joe Billy McDade, to Chief Judge, U.S. District Court for the Central District of Illinois, succeeding Michael M. Mihm, November 19.

Senior Status: Judge William L. Dwyer, U.S. District Court for the Western District of Washington, December 1.

Senior Status: Judge Robert P. Patterson, Jr., U.S. District Court for the Southern District of New York, December 31.

Senior Status: Judge Anna Diggs Taylor, U.S. District Court for the Eastern District of Michigan, December 31.

Senior Status: Court of Appeals Judge David R. Thompson, U.S. Court of Appeals for the Ninth Circuit, December 31.

Retired: Judge Edward N. Cahn, U.S. District Court for the Eastern District of Pennsylvania, December 31.

Retired: Bankruptcy Judge Henry Clyde Pearson, U.S. Bankruptcy Court for the Western District of Virginia, November 30.

Resigned: Magistrate Judge Margaret B. Seymour, U.S. District Court for the District of South Carolina, October 29.

Deceased: Senior Judge James W. Kehoe, U.S. District Court for the Southern District of Florida, December 13.

Deceased: Senior Judge Dennis Raymond Knapp, U.S. District Court for the Southern District of West Virginia, December 25.

Deceased: Senior Judge David S. Nelson, U.S. District Court for the District of Massachusetts, October 21.

Deceased: Senior Judge Earl F. O'Connor, U.S. District Court for the District of Kansas, November 29.

Deceased: Senior Judge Joseph E. Stevens, Jr., U.S. District Court for the Western District of Missouri, December 18.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of February 1, 1999

Courts of Appeals	
Vacancies	17
Nominees	7
District Courts	
Vacancies	41
Nominees	10
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	25

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

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House Appropriations continued

Henry Bonilla, R-TX
Joe Knollenberg, R-MI
Dan Miller, R-FL
Jay Dickey, R-AR
Jack Kingston, R-GA
Rodney P. Frelinghuysen, R-NJ
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Chet Edwards, D-TX
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James E. Clyburn, D-SC
Maurice D. Hinchey, D-NY
Lucille Roybal-Allard, D-CA
Sam Farr, D-CA
Jesse L. Jackson, Jr., D-IL
Carolyn C. Kilpatrick, D-MI
Allen Boyd, D-FL

House Judiciary Committee

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George Gekas, R-PA

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Stephen Buyer, R-IN
Ed Bryant, R-TN
Steve Chabot, R-OH
Bob Barr, R-GA
William Jenkins, R-TN
Asa Hutchinson, R-AR
Edward Pease, R-IN
Christopher Cannon, R-UT
James Rogan, R-CA
Lindsey Graham, R-SC
Mary Bono, R-CA
Vacancy

John Conyers Jr., D-MI, ranking minority member

John Conyers, D-MI

Barney Frank, D-MA
Howard Berman, D-CA
Rick Boucher, D-VA
Jerrold Nadler, D-NY
Robert Scott, D-VA
Melvin L. Watt, D-NC
Zoe Lofgren, D-CA
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William Delahunt, D-MA
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Steven Rothman, D-NJ
Tammy Baldwin, D-WI
Anthony Weiner, D-NY

Committee Addresses Crisis in Federal Pay

Judge David R. Hansen (8th Cir.) was appointed to the District Court for the Northern District of Iowa in 1986 and elevated to the Eighth Circuit in 1991. He became chair of the Judicial Conference Committee on the Judicial Branch in 1998.

Q: Judges have received only a single cost-of-living adjustment since 1993, the one in January 1998. What has this meant in terms of the erosion in take-home dollars for a judge's salary?

A: Since January 1993, the value of a judge's salary has declined over 16 percent when measured against the Consumer Price Index. What that means is that each judge's annual salary is worth about $22,000 less today than it was in 1992. In the aggregate, since 1993, each judge has lost over $77,000 in purchasing power. On the other side of the coin, the caseloads of district judges have increased by more than 15 percent. This situation of having more work to do for less real pay is disheartening, discouraging, and demoralizing to judges. But, we are not alone in feeling the real pain of constant salary erosion. The compensation of each member of Congress and high-level executive branch official has slipped in the very same way.

Q: The assumption had been that the annual Employment Cost Index adjustment mechanism built into the 1989 Ethics Reform Act would eliminate this kind of problem. What went wrong?

A: After 1989, annual cost-of-living salary adjustments were something that judges and other top government officials were not supposed to worry about. The Ethics Reform Act provided for indexed cost-of-living salary adjustments in each year that the pay of the rank and file federal employees was adjusted. The Act worked well for the first two or three years, and the Congress, the Judiciary, and the senior Executive Branch officials received the salary adjustments contemplated when the Act was passed—adjustments that were statutorily designed to maintain what had been determined by the Congress in 1989 to be fair and adequate salaries. In 1993 all of government joined in a belt-tightening effort because of the size of the projected budget deficit and the perceived state of the economy, and no government employee received a COLA. Every year thereafter, with the exception of 1997 when Congress authorized a 2.3 percent cost-of-living adjustment payable in 1998, the Congress has seen fit to deny itself the annual cost-of-living adjustment already authorized by the 1989 Act, and in so doing, it has also denied the Act's benefits to the Judiciary and the senior officials of the executive branch.

The problem is that only Congress can fix the pay of its members, judges, and other top government officials, or create a mechanism for doing so. Members of Congress recognize the delicate nature of this conflict, and they are often reluctant to allow themselves to receive even modest cost-of-living salary adjustments because they fear an adverse public reaction. I wish the media would help explain their financial needs, including the need of many of them to maintain two homes.

Judge David Hansen

Q: The Ethics Reform Act also created a Citizens Commission on Public Service and Compensation. What was its original purpose? And what happened to the Commission?

A: In 1989, Congress adopted a new approach to the problem of setting the salaries of top government officials by establishing a Citizens' Commission on Public Service and Compensation to replace what was informally known as the Quadrennial Salary Commission. The Citizens' Commission is substantially different from the Quadrennial Salary Commission, and Congress adopted the new system because members believed that the public was unhappy with certain features of the former process. In particular, many members believed that the public was irate because the Quadrennial Commission's recommendations could take effect in an automatic fashion without a recorded vote.

The Citizens' Commission, like the Quadrennial Salary Commission, was to be appointed every four years with the mission of recom-

mending salary levels for top government officials. The first commission was to be convened in 1993; however, Congress rescinded its funding, and only four of 11 members were named. The Chief Justice named two appointees, and I understand that the President pro tempore of the Senate made appointments as well.

Prior to 1967, which is the year the Quadrennial Salary Commission system was established, there was no established mechanism for adjusting the pay of judges and other top government officials. As a result, top government employees went years without salary adjustments. The Quadrennial Salary Commission was intended to bring a degree of fairness and regularity to the politically charged issue of federal compensation. This system, while not perfect, did lead to some periodic upward adjustments in pay.

Q: Where has the Judicial Conference stood on the issue of salary adjustments for judges?

A: The Judicial Conference strongly believes that Congress and the President should let the Ethics Reform Act's Employment Cost Index mechanism work. The crisis in federal pay in the 1980's came about largely because of the absence of such annual and automatic cost-of-living salary adjustments. When the Ethics Reform Act was enacted, it was understood that the Employment Cost Index mechanism would provide top government officials with regular cost-of-living salary adjustments which would alleviate the future need for major "catch-up" adjustments of the type enacted in 1989.

The Conference also supports a pay adjustment for judges to recoup lost annual cost-of-living salary adjustments. Such an adjustment would not raise in absolute terms the salaries of judges and other top government officials, it would simply restore their lost purchasing power.

The Conference also wants to address the problem of salary compression. Within the Judiciary, the salaries of court unit executives are bumping up against (and, in some instances, surpassing) the salaries of bankruptcy judges and magistrate judges. Similar compression is affecting the pay of executive branch officials, as well. In San Francisco, officials in the top four levels of the Senior Executive Service (SES) are bumping up against the salary cap of $125,900. In most other localities, officials in the top three levels of the SES have hit this cap.

Q: Your Committee on the Judicial Branch has made recommendations in the past on judicial salaries. What is the Committee's agenda for the 106th Congress?

A: The Committee is deeply concerned about the pattern of pay slippage that has emerged due to the denial of annual cost-of-living salary adjustments. In 1989, judges, in return for the assurance of annual and automatic cost-of-living salary adjustments, accepted severe limits on income earned from outside sources and honoraria. If Congress and the President do not reverse this pattern of salary neglect, it will threaten judicial independence, as well as the ability of the Judiciary to attract and retain talented, public-spirited people who could and do earn much more money elsewhere. It has not escaped our notice that pursuant to legislation passed last year, the IRS is now authorized to pay its most senior managers salaries equal to that paid to the Chief Justice.

Q: What is the public perception of COLA-type pay adjustments for elected officials and federal judges?

A: I believe that a majority of the public supports compensating its government's top officials fairly, and that includes some method of protecting the pay of those officials from the effects of inflation. Good modern government demands the sharpest minds and the sharpest talents to solve the problems of an ever increasingly complex society, and government must be at least reasonably competitive with the salaries and benefits offered in the private sector.

Judges, like any other employees, do not expect to receive real salary increases annually; however, judges also do not accept judicial appointments anticipating that their purchasing power will shrink annually. I sometimes wonder how quickly those judges appointed in 1993 would have accepted their commissions if they had been told then that their real pay would be worth $22,000 less per year by 1999. We live in a society where cost-of-living salary adjustments to maintain purchasing power—whether such adjustments are made pursuant to a collective bargaining agreement or a statute (as in the case of Social Security)—are a fact of economic life. The danger in denying top government officials annual cost-of-living salary adjustments to protect them against salary erosion is that the best and the brightest will refuse to enter government service because it will entail too great a financial sacrifice. Able lawyers are more than willing to make some sacrifices for the prestige and sense of public service that the Judiciary offers, but psychic income does not protect you from increases in the cost of living, nor does it buy a house and pay a mortgage, or send children to college.

*See **Interview** on page 12*

Interview continued from page 11

Q: In your opinion, what is the single greatest impediment to a cost-of-living increase for judges?

A: The reluctance of the Congress to let the 1989 Act work as it was intended to grant its members a cost-of-living adjustment.

Q: Legislation on judicial benefits surfaced briefly in the 105th Congress. What happened to the bill, and what do you expect, legislatively, in the coming session?

A: Last summer, the Judiciary sought legislation authorizing it to establish a flexible benefits plan, including a cafeteria plan, for a period of five years for federal judicial officers and employees. Flexible benefits plans and cafeteria plans are almost universal in the large employee private sector and are also very common within state governments. In fact, the Judiciary's proposed plan is very similar to one proposed for House members and employees by the House Oversight Committee in 1996.

Essentially, a flexible benefits plan allows an employee to divert salary to an employee's benefits on a pre-tax basis, thus transforming the benefits into non-taxable fringe benefits. An employee would save money by not paying taxes on the portion of the employee's salary that pays insurance premiums. In this way, employees may have easier access to such essential benefits as health care and dependent care While the Judiciary would continue to offer judges and employees the current federal benefits package, this statutory change would authorize the Director of the Administrative Office to make new supplemental benefits available, including dental benefits, short- and long-term disability benefits, long-term care insurance, and vision care. Last year our proposed legislation was included in an omnibus civil service bill containing over 40 provisions, some provisions of which were strongly opposed by federal employee unions, as well as by some key members of the House Civil Service Subcommittee. In the face of strong opposition to many of the draft bill's provisions, then House Civil Service Subcommittee Chairman John Mica (R-FL) agreed to pursue only several provisions that had the unanimous support of subcommittee members. As a result, the Judiciary's flexible benefits legislation did not make it out of subcommittee.

I believe that the Judiciary will seek to have similar legislation introduced this year.

THE THIRD BRANCH

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Newsletter of the Federal Courts

Vol. 31
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Bare Bones Budget Request Carries Risks

Testifying before a House subcommittee on the Judiciary's FY 2000 budget were (l. to r.) Federal Judicial Center Director Judge Rya Zobel, Judge John G. Heyburn II, Chief Judge Lawrence L. Piersol and AO Director Leonidas Ralph Mecham.

Despite a significant growth in workload, the federal Judiciary's fiscal year 2000 budget request is a bare bones one that will allow the courts to function at their current services level and will freeze staffing for the second year in a row, a federal judge told a House appropriations subcommittee.

"We ask for no new initiatives, no new programs . . . and no new court clerk's staff or probation and pretrial services officers," said Judge John G. Heyburn II (W.D. KY), chair of the Judicial Conference Budget Committee. In developing its proposed budget, the Judiciary made several assumptions concerning workload, uncontrollable expenses, and productivity enhancements due to automation and technology. This approach is risky, and if the assumptions prove to be incorrect "it will force us to make some very unsatisfactory and even dangerous choices," Heyburn told the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies.

Heyburn was accompanied at the hearing by Chief Judge Lawrence L. Piersol (D. S.D.), who also is a member of the Budget Committee and Leonidas Ralph Mecham, Director of the Administrative Office, and a member of the Conference's Executive Committee. Judge Rya W. Zobel, Director of the Federal Judicial Center, presented the Center's budget request.

Mecham told the subcommittee members that, despite substantial growth in workload, the AO's budget request would maintain current

See ***Budget*** *on page 2*

INSIDE

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Survey Shows Belief in U.S. Justice ..... pg. 9

Judiciary Wins Delay

Insurance Rate Increase On Hold

Calling the action "legally objectionable and poor public policy," the Judiciary is attacking a recent determination by the Office of Personnel Management (OPM) to nearly double the Federal Employees Group Life Insurance (FEGLI) premiums of Article III judges 65 years of age or older.

The premiums, which are due to increase May 1, may cost some judges over $13,000 more per year for life insurance. Collectively, the 494 Article III judges who are older than 60 now will pay $3.5 million more in premiums annually. These judges will not receive extended coverage or additional benefits—*their coverage does not change.*

Shortly after OPM announced the increase, Judge Jon Newman (2nd Cir.), designated by the Judicial Conference Executive Committee to lead the delegation; Judge Joyce Hens Green (D. D.C.), a member of the Conference Judicial Branch Committee; Judge W. Earl Britt (E.D. N.C.), past-president of the Federal Judges Association; and Administrative Office Director Leonidas Ralph Mecham met with OPM

See ***FEGLI*** *on page 3*

Budget continued from page 1

services levels, not add staff. "We felt it would be imprudent to request additional staff in FY 2000 when none are requested for the courts, regardless of our need," said Mecham. "Consequently, it is imperative that the AO receive its full request; otherwise critical staff and support functions for the courts will be in jeopardy."

At the hearing subcommittee Chairman Harold Rogers (R-KY) questioned the "negative allowance" the Office of Management and Budget (OMB) imposed on the Judiciary when it reduced its FY 2000 request by $159 million. "What business is it of the President to say how much money the courts should get? Where in the Constitution does it say that the President should decide how much money the courts should get? I resent it terribly," said Rogers. "OMB is overreaching in every respect. It's outrageous."

Mecham agreed with Rogers, pointing out that the OMB action was deceptive as well as illegal, since the President's budget, by statute, must be sent to Congress "without change."

Rogers also referred to "the next potential calamity" on June 15, when FY 99 funding runs out for the Judiciary and others covered by the Commerce, State, Justice appropriations bill. Because Congress and the Administration could not reach an agreement on the upcoming census, they decided to provide only partial funding for the Department of Commerce, which administers the census, as well as the Judiciary and others contained in the same funding bill. It was hoped that the issues would be resolved by the Supreme Court prior to June 15 and full funding would be restored. The Supreme Court already has ruled on the case, but funding has not been restored and many major issues remain. Both Rogers and the subcommittee's ranking minority member, Jose Serrano (D-NY) said they would attempt to free the Judiciary from the funding exclusion. Mecham strongly urged the subcommittee members to remove the Judiciary entirely from the June 15 cutoff. He pointed out that the Judiciary is an independent branch of government and should not be placed in the middle of a political fight involving two branches of government. He said the Judiciary must remain neutral and should not be pulled into a political fight merely because its funds are in the same bill as the census appropriations.

The Judiciary's total request for FY 2000 is for $4.39 billion in obligated funds. The requested $342 million increase over FY 99 is largely to pay for uncontrollable expenses such as rent, annual pay increases, and other mandatory costs associated with law enforcement, defender services, and increased security needs. If the Salaries and Expenses request of $3.45 billion is not fully funded, the following are possible:

- a refocusing by probation officers of their supervision efforts on offenders who are the most obvious risk to the community, while remaining offenders receive minimal supervision;
- a reduced level of drug and mental health treatment;
- an increase in the average time of disposition for civil and bankruptcy cases and appeals;
- delays in the implementation of important new automated systems;
- reduction in both public hours in clerks' offices and timeliness in responding to public inquiries;
- shutdown of non-resident visiting court facilities, which would mean added travel and related costs to litigants and could impose significant hardship on citizens in states where residents are geographically dispersed.

In FY 2000, approximately $430 million is requested for Defender Services, which represents a 5 percent increase in total obligations to cover standard pay and inflationary increases, anticipated growth in criminal filings that will increase the number of Criminal Justice Act (CJA) representations, and an increase in the low hourly rates paid to CJA attorneys.

"An impending crisis threatens the entire criminal justice system," Heyburn said. "The crisis is caused by the inordinately low hourly rate currently paid private panel attorneys in non-capital cases." The current rates—$45 for out-of-court work and $65 for in-court work—often don't cover overhead expenses and many judges are reporting that they are having difficulty finding qualified attorneys to accept CJA appointments.

"To solve this inequity of only one small rate increase in 15 years and to avert the impending crisis, the Judicial Conference requests an increase . . . to allow all judicial districts to increase the hourly rates up to the statutorily authorized level of $75 per hour," Heyburn said. "We believe that the time has come to raise rates to at least a minimally acceptable level."

For the court security program, a total of $206 million is requested. "Providing an adequate level of security to all citizens entering our federal courthouses remains an ongoing concern of the Judicial Conference," Heyburn said. "Federal courts are among the most vulnerable security risks of any facilities in the nation."

For the jurors program, a total of $72 million is requested. A four percent increase in "juror days" is expected in FY 2000.

Heyburn also told the subcommittee about the numerous steps the Judiciary is taking to economize while increasing efficiency. "Knowing the problem Congress faces in balancing the budget, the Judiciary is doing everything possible to contain

costs," he said. "The ability of the courts to handle an ever-growing workload with no additional staff in either fiscal year 1999 or 2000 is dependent upon the potential savings and productivity improvements associated with these initiatives." The highlights of the Judiciary's cost-saving efforts are contained in its annual report entitled *Optimal Utilization of Judicial Resources*, which can be found on the Judiciary's web site at www.uscourts.gov.

Finally, Heyburn asked the subcommittee to provide fair and adequate compensation to top government officials in all three branches of the federal government. Since 1993, these officials have received only a modest 2.3 percent pay adjustment. "We live in a society where cost-of-living adjustments to maintain purchasing power are a fact of economic life," Heyburn said. "I believe that a majority of the American public supports fair compensation for its government's top officials. With that in mind, we are hopeful that Congress will allow the mechanisms of the 1989 Ethics Reform Act to work, and that all top government officials will be provided a COLA in FY 20000."

Representative Lucille Roybal-Allard (D-CA) expressed concern about the failure of the White House to provide in the General Services Administration budget the funds required to build vitally needed buildings for the Judiciary. She specifically noted that money for a new court building in Los Angeles was deleted from the request by the White House. Mecham strongly urged that she and the other members of the committee fully fund the Judiciary's request of $579 million to build 17 buildings in fiscal year 2000. He pointed out that for three years in a row, the Clinton Administration had failed to request money for Judiciary buildings. In another appropriation subcommittee meeting that same week, Allard had raised a similar question with OMB Director Jacob Lew.

FEGLI, continued from page 1

Director Janice R. Lachance. Their discussion resulted in OPM agreeing to hold the rate increase in abeyance for a year. The Judiciary has and will continue to aggressively explore all possible solutions to the rate increase.

For example, upon learning that Judge Ann Williams (N.D. Ill.), president-elect of the Federal Judges Association, and Magistrate Judge Robert Collings (D. Mass.) would be meeting with White House Chief of Staff John Podesta, the President's Chief Counsel, Charles Ruff, and OMB Assistant Director Michael Deich on judicial pay matters, Mecham alerted Williams to the critical problem for judges posed by the increase in their insurance premiums. At his urging, she expanded her agenda at the White House to include insurance. Ruff was aware of the action through conversations with Chief Judge Proctor Hug (9th Cir.) and former federal judge and White House Counsel Abner Mikva. They promised to review the situation promptly and to contact OPM Director Lachance to be sure that the Judiciary's position was fully considered before any final decision was made.

(l. to r.) AO Director Leonidas Ralph Mecham, Judge W. Earl Britt, Judge Joyce Hens Green and Judge Jon Newman reviewed the Judiciary's position prior to their meeting with OPM Director Lachance.

For historical and statutory reasons, Article III judges have viewed FEGLI as whole life insurance that would protect their families against untimely death and be used as an estate builder. The increase in rates will adversely impact Article III judges covered by FEGLI, but it is particularly hard on senior judges, who choose to work when they could enjoy retirement, and who now, due to age or health, may not be insurable by a private insurance carrier.

In a letter to OPM, Mecham wrote that the change in the premium rate "imposes an unfair financial penalty on voluntary judicial service. Presently, senior judges voluntarily adjudicate more than 15 percent of the federal judicial caseload. This steep increase in premium rates primarily will affect these judges. As a consequence, some of them may be forced to retire completely from the judicial office and obtain more lucrative employment in the private sector in order to pay the increased cost of FEGLI premiums."

The increase in FEGLI premiums adds to the depressing financial picture for judges. Repeatedly denied cost-of-living adjustments, judges have seen their salaries erode so that their pay checks already are worth $22,000 less today than they were in 1992.

Questions also have been raised on the need to expand the table age bands and the resulting extreme increase of the premiums. The FEGLI's Employees Life Insurance fund's reserves are currently about $19 billion and OPM reports substantial increases in revenues in recent years. OPM has not competitively bid the FEGLI contract since 1954, and the program's rates are significantly higher than those in the private sector.

106th Congress Names Subcommittee Members

Making up for lost time, Congress finished naming its subcommittee members and started its legislative work for the first session. A listing follows of the subcommittees that will consider some of the major legislation affecting the Judiciary in the 106th Congress. Italics indicate a new member or subcommittee.

Senate Appropriations Subcommittee on Commerce, Justice, State and the Judiciary

Judd Gregg, R-NH, chairman

Judd Gregg, R-NH

Ted Stevens, R-AK
Pete V. Domenici, R-NM
Mitch McConnell, R-KY
Kay Bailey Hutchison, R-TX
Ben Nighthorse Campbell, R-CO

Ernest F. Hollings, D-SC

Ernest F. Hollings, D-SC, ranking minority member
Daniel Inouye, D-HI
Frank Lautenberg, D-NJ
Barbara Mikulski, D- MD
Patrick Leahy, D-VT

Senate Appropriations Subcommittee on Treasury and General Government

Ben Nighthorse Campbell, R-CO

The Senate Appropriations Subcommittee on Treasury and General Government appropriates funds to the General Services Administration for constructing federal buildings, including courthouses. The Senate Environment and Public Works Subcommittee on Transportation and Infrastructure authorizes the expenditure of those appropriated funds.

Ben Nighthorse Campbell, R-CO, chairman
Richard C. Shelby, R-AL
Jon Kyl, R-AZ

Byron Dorgan, D-ND, ranking minority member
Barbara Mikulski, D-MD

Byron Dorgan, D-ND

Senate Judiciary Subcommittee On Administrative Oversight and the Courts

Charles E. Grassley, R-IA

Charles E. Grassley, R-IA, chairman
Jeff Sessions, R-AL
Strom Thurmond, R-SC
Spencer Abraham, (R-MI)

Robert G. Torricelli, D-NJ

***Robert G. Torricelli,** D-NJ,* ranking minority member
Russell D. Feingold, D-WI
Charles Schumer, D-NY

Senate Judiciary Subcommittee on Criminal Justice Oversight

Strom Thurmond, R-SC

Strom Thurmond, R-SC, chairman
Mike Dewine, R-OH
John Ashcroft, R-MO
Spencer Abraham, R-MI
Jeff Sessions, R-AL

Charles Schumer, D-NY, ranking minority member

Charles Schumer, D-NY

Joseph R. Biden, D-DEL
Robert G. Toricelli, D-NJ
Patrick Leahy, D-VT

Senate Environment and Public Works Subcommittee on Transportation and Infrastructure

George V. Voinovich, R-OH

***George V. Voinovich,** R-OH,* chairman
John W. Warner, R-VA
Robert Smith, R-NH
Christopher S. Bond, R-MO
James M. Inhofe, R-OK
Craig Thomas, R-WY

Max Baucus, D-MT, ranking minority member
Daniel Patrick Moynihan, D-NY
Harry Reid, D-NV

Max Baucus, D-MT

Bob Graham, D-FL
Joseph I. Lieberman, D-CT

House

House Appropriations Subcommittee on Commerce, Justice, State, and the Judiciary

For fiscal year 2000, the subcommittee has begun to consider the Judiciary's overall budget. A report on the House hearing is on page 1.

Harold Rogers, R-KY

Harold Rogers, R-KY, chairman
Jim Kolbe, R-AZ
Charles H. Taylor, R-NC
Ralph Regula, R-OH
Tom Latham, R-IA
Dan Miller, R-FL
Zach Wamp, R-TN

José E. Serrano, D-NY, ranking minority member
Julian C. Dixon, D-CA*
Alan B. Mollohan, D-WV
Lucille Roybal-Allard, D-CA

* Mr. Dixon is on leave of absence as Ranking Subcommittee Member during his term of service as Ranking Member of the Permanent Select Committee on Intelligence.

José E. Serrano, D-NY

House Appropriations Subcommittee on Treasury, Postal Service, and General Government

Jim Kolbe, R-AZ

Jim Kolbe, R-AZ, chairman
Frank R. Wolf, R-VA
Michael P. Forbes, R-NY
Anne Northup, R-KY
Jo Ann Emerson, R-MO
John E. Sununu, R-NH

Steny Hoyer, D-MD

John E. Peterson, R-PA

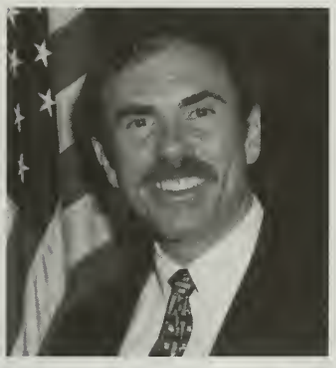
Steny Hoyer, D-MD, ranking minority member
Carrie P. Meek, D-FL
David E. Price, D-NC
Lucille Roybal-Allard, D-CA

House Transportation and Infrastructure Subcommittee on Economic Development, Public Buildings, Hazardous Materials and Pipeline Transportation

(Formerly the Subcommittee on Public Buildings and Economic Development.)

Bob Franks, R-NJ

Bob Franks, *R-NJ,* chairman
John Cooksey, R- LA, vice-chair
Thomas Ewing, R-IL
Stephen LaTourette, R-OH



Bob Wise, Jr., D-WV,

J.C. Watts, Jr., R-OK
Bud Shuster (ex officio)

Bob Wise, Jr., *D-WV,* ranking minority member
Eleanor Holmes Norton, D-DC
Ronnie Shows, D-MS
James L. Oberstar, D-MN, (ex officio)

House Judiciary Subcommittee On Courts And Intellectual Property

Howard Coble, R-NC

Howard Coble, R-NC, chairman
F. James Sensenbrenner, R-WI
Elton Gallegly, R-CA
Bob Goodlatte, R-VA
William L. Jenkins, R-TN
Edward A. Pease, R-IN
Christopher B. Cannon, R-UT
James E. Rogan, R-CA
Mary Bono, R-CA

Howard L. Berman, D-CA

Howard L. Berman, D-CA, ranking minority member
John Conyers Jr., D-MI
Rick Boucher, D-VA
Zoe Lofgren, D-CA
William D. Delahunt, D-MA
Robert Wexler, D-FL

ABA Task Force on Federalization of Criminal Law

Calling Congress' federalization of crimes traditionally handled in state courts "misguided and ineffectual," an American Bar Association Task Force reports that "state governments are neither incapable nor unwilling to exercise their traditional responsibility to protect the lives and property of citizens." The report released last month agreed with Judiciary concerns that moving additional crimes into federal court places demands on an already strained federal court system and threatens the quality of essential federal justice.

The ABA formed the Task Force on the Federalization of Criminal Law in response to what it termed widespread concerns over the number of new federal crimes being created annually by Congress. The 17-member task force was asked to determine if there has been an increase in federal crimes that duplicate state crimes, and, if so, whether that development adversely affects the proper allocation of responsibility between the national and state governments for crime prevention and law enforcement. Members included task force chair former Attorney General Edwin Meese III, Judge Jon O. Newman (2nd Cir.), former Senator Howell T. Heflin, former Representative Robert W. Kastenmeier, several former U.S. attorneys, and members from academia, law enforcement and private practice.

The task force report identified a trend toward federalization and counseled against its continuation. The task force found that more than 40 percent of the federal criminal provisions enacted since the Civil War have been enacted since 1970. It also tallies an estimated 1,000 bills dealing with criminal statutes that were introduced in the 105th Congress. The task force report cautioned that "Congress ought to reflect long and hard before it enacts legislation which puts federal police in competition with the states for the confidence of its citizenry and limited law enforcement resources."

In his *1998 Year-End Report on the Judiciary*, Chief Justice William H. Rehnquist said the trend to federalize crimes traditionally handled in state courts "not only is taxing the Judiciary's resources and affecting its budget needs, but it also threatens to change entirely the nature of our federal system. The pressure in Congress to appear responsive to every highly publicized societal ill or sensational crime needs to be balanced with an inquiry into whether states are doing an adequate job in these particular areas and, ultimately, whether we want most of our legal relationships decided at the national rather than local level."

The point, according to the task force report, is that "an increase in the volume of federal criminal cases, driven primarily by additional cases that could as well be tried in state courts, diminishes the separate and distinctive role played by federal courts." The role of the federal courts is not to simply duplicate the functions of the state courts. Although many of the newly federalized laws may be rarely used, their presence on the books presents prosecutorial opportunities that may be exploited at any time in the future.

There are many other adverse implications of the federalization of criminal law that the report treats, including the impact for the federal prison system, local law enforcement efforts, on citizen perception of state and federal responsibility, and on the application of limited federal resources. Where federal and state laws exist for the same crime, a citizen prosecuted for a state crime is subject to a set of consequences appreciably different from one prosecuted for a federal crime, and sentencing options—including the length of sentence and location and nature of confinement—as well as opportunities for parole and probation, will differ greatly.

The task force makes it clear it has no concerns when Congress addresses crimes intruding upon federal functions, harming entities or personnel acting in a federal capacity; when it addresses offenses committed on sites where the federal government has territorial responsibility, or when it addresses matters of international crime. The task force agreed on a guiding principle concerning the creation of federal crime: "To create a federal crime, a strong federal interest in the matter should be clearly shown, that is, a distinctly federal interest beyond the mere conclusion that the conduct should be made criminal by some appropriate governmental entity."

The report is available at http://www.abanet.org/media/.

ABA Supports Judiciary on Key Issues

The ABA's House of Delegates, at its mid-year meeting, showed its support for the Judiciary through a number of resolutions addressing critical issues.

- Congress should de-link congressional pay from judicial pay and make judicial salaries subject to the same periodic and automatic cost-of-living adjustments granted career federal employees.
- Public officials should refrain from threatening judicial impeachment proceedings because of disagreement with isolated decisions of a federal judge.
- The President should promptly advance nominees for current vacancies for federal judicial positions and the Senate should hear and vote on those nominations in an expeditious manner.

FOR THE FEDERAL JUDICIAL TELEVISION NETWORK

All times are Eastern Standard Time

THE ADR ACT OF 1998: WHAT IT MEANS FOR THE COURTS
April 21, 8:00, 9:00, 10:00, 11:00 a.m.;12:00, 1:00, 2:00, 3:00, 4:00, 5:00 p.m.

ADVERSITY QUOTIENT: TURNING OBSTACLES INTO OPPORTUNITIES (PBS)
Advance registration required, May 12, 12:55 p.m.

CELEBRATE YOUR FREEDOM: THE IMPORTANCE OF JURY SERVICE TO AN INDEPENDENT JUDICIAL SYSTEM
April 27, 12:00 p.m.

CITIBANK TRAVEL & PURCHASE CARD UPDATE
April 6, 8:30 a.m.; April 12, 9:00 a.m.

CIVIL SERVICE RETIREMENT SYSTEM
April 2, 3:00 p.m., April 6, 2:30 p.m.; April 16, 9:30 a.m.; April 20, 8:30 a.m.; April 26, 3:00 p.m.; April 30, 3:30 p.m.

COMPUTER-GENERATED VISUAL EVIDENCE PARTS ONE & TWO
April 14, 12:00, 3:00 p.m.

COURT TO COURT (JANUARY 1999)
April 9, 8:00, 9:00, 10:00, 11:00 a.m.;12:00, 1:00, 2:00, 3:00, 4:00, 5:00 p.m.

COURT PERSONNEL SYSTEM (COURT EMPLOYEES)
April 6, 10:30 a.m., April 12, 3:00 p.m.; April 27, 2:00 p.m.

COURT PERSONNEL SYSTEM (JUDGES)
April 6, 11:00 a.m.; April 12, 3:30 p.m.; April 27, 2:30 p.m.

EEOC CHAIRMAN SPEAKS FOR ASIAN AND PACIFIC ISLAND HERITAGE WEEK
April 12, 12:00 p.m.; April 27, 9:30 a.m.

ELECTRONIC RECORDS MANAGEMENT
April 5, 10:00 a.m.; April 12, 10:00 a.m.; April 27, 8:30 a.m.

FEDERAL EMPLOYEES RETIREMENT SYSTEM (FERS)
April 2, 1:30 p.m.; April 6, 1:00 p.m.; April 16, 11:00 a.m.; April 20, 12:00 p.m.; April 30, 10:00 a.m.

FJTN NEWS UPDATE
FJTN News Updates will be aired throughout the FJTN broadcast day, appearing either before or after a program.

IN CAMERA: A DISCUSSION WITH JUDICIAL LEADERS
Every Monday at 8:30 a.m.; Every Tuesday at 4:30 p.m.

INFORMATION TECHNOLOGY PROJECT MANAGEMENT: WHY IT'S IMPORTANT TO YOU
April 6, 4:00 p.m.; April 20, 10:00 a.m.; April 26, 4:30 p.m.; April 27, 4:00 p.m.

INTRODUCTION TO THE INTERNET/INTRANET (J-NET)
April 19, 1:00 p.m.;

INTRODUCTION TO THE JUDICIARY BENEFITS INITIATIVE
April 5, 3:00 p.m.; April 13, 10:30 a.m., 2:30 p.m.; April 19, 9:00 a.m.; 3:00 p.m.; April 26, 9:00 a.m.; April 30, 11:30 a.m.

JUDGE JOSE A. CABRANES SPEAKS FOR HISPANIC-AMERICAN HERITAGE WEEK
April 6, 11:30 a.m.; April 12, 4:30 p.m.; April 27, 3:30 p.m.

JUDICIARY BENEFITS INITIATIVE: TOWERS PERRIN STUDY
April 5, 4:00 p.m.; April 13, 11:30 a.m.; 3:30 p.m.; April 19, 10:00 a.m.; 4:00 p.m.; April 20, 2:00 p.m.; April 26, 10:00 a.m.; April 30, 12:30 p. m.

JUDICIARY BENEFITS INITIATIVE: LONG-TERM CARE—WHAT IS IT?
April 13, 1:00 p.m. (live); April 19, 11:00 a.m.; April 20, 3:00 p.m.; April 26, 11:00 a.m.; April 30, 1:30 p.m.;

JUSTICE RUTH BADER GINSBURG SPEAKS FOR WOMEN'S HERITAGE WEEK
April 6, 12:00 p.m.; April 12, 4:00 p.m.; April 27, 3:00 p.m.

KEEPING POWER BY GIVING IT AWAY (PBS)
April 7, 1:25 p.m.

LEADERSHIP 2000 CLASS THREE, MODULE 2, PERSONAL STRATEGIES FOR NAVIGATING CHANGE
April 22, 1:00 p.m.
CLASS FOUR, MODULE 2, PERSONAL STRATEGIES FOR NAVIGATING CHANGE
April 23, 1:00 p.m.

MANAGING GENERATION XERS
April 8, 1:00 p.m. (live); April 15, 8:00, 10:00 a.m., 12:00, 2:00, 4:00 p.m.

NEUROBIOLOGY OF ADDICTION
April 1, 1:00 p.m.

PEDOPHILES WHO USE THE INTERNET
April 28, 9:00 a.m.; 1:00 p.m.

PERSPECTIVES ON PROBATION AND PRETRIAL SERVICES (APRIL 1999)
April 29, 8:00, 9:00, 10:00, 11:00 a.m.; 12:00, 1:00, 2:00, 3:00, 4:00, 5:00 p.m.

PREVENTING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES
April 5, 11:00 a.m.; April 13, 8:30 a.m.

SECURITY FOR JUDICIARY COMPUTER USERS
April 5, 9:00 a.m.

SPACE AND FACILITIES COURTHOUSE PROJECTS PROGRAM A
April 2, 8:30 a.m.; April 16, 2:00 p.m.
PROGRAM B
April 2, 9:30 a.m.; April 16, 3:00 p.m.

SPECIAL REPORT: Y2K
April 2, 12:30 p.m.; April 6, 9:30 a.m.; April 12, 11:00 a.m.; April 16, 8:30 a.m.; April 19, 12:00 p.m.; April 26, 12:00 p.m.; April 30, 2:30 p.m.

TECHNOLOGY AND HUMAN RESOURCES: ARE YOU KEYED UP?
April 2, 11:00 a.m.; April 16, 12:30 p.m.; April 20, 10:30 a.m.; April 27, 10:30 a.m.; April 30, 8:30 a.m.

TICKET TO RIDE: TRAVEL REGULATIONS FOR COURT PERSONNEL
April 2, 4:30 p.m.; April 6, 12:30 p.m.; April 13, 12:30 p.m.; April 16, 4:30 p.m.; April 20, 4:00 p.m.

WORDPERFECT 6.1 TO 8.0 TRANSITION
April 5, 1:00 p.m.; April 26, 1:00 p.m.

WORDPERFECT 8.0 TEMPLATES
April 12, 1:00 p.m.

THE THIRD BRANCH

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APRIL

6 Tuesday
Federal Circuit Conference

6-8 Tuesday-Thursday
National Workshop for Bankruptcy Judges

12-13 Monday-Tuesday
Advisory Committee on Evidence Rules

14-16 Wednesday-Friday
Workshop for Court of Appeals Judges

15-16 Thursday-Friday
Advisory Committee on Appellate Rules

19-20 Monday-Tuesday
Advisory Committee on Civil Rules

22-23 Thursday-Friday
Advisory Committee on Criminal Rules

28-May 1 Wednesday-Saturday
Fifth Circuit Conference

MAY

6-9 Thursday-Sunday
Eleventh Circuit Conference

10-11 Tuesday-Wednesday
Committee on the Judicial Branch

12-14 Wednesday-Friday
Conference for Chief District Judges

23-25 Sunday-Tuesday
Seventh Circuit Conference

25-26 Tuesday-Wednesday
Committee on International Judicial Relations

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH

Vol. 31 Number 3 March 1999

BANKRUPTCY JUDGESHIP, District of Oregon, Portland
The U.S. Courts for the Ninth Circuit are recruiting to fill a vacancy on the bankruptcy court for the District of Oregon. Chambers are located in Portland, and service will commence approximately September, 1999. Qualifications include admission to practice, good standing bar membership, and at least 5 years of legal practice. Appointment : 14 years, subject to possible reappointment. Salary is $125,764. No relocation expenses provided. Vacancy announcement and application forms are available via court website at 222.ce9.uscourts.gov (click on "careers"). They are also available at all court clerks offices in the Ninth Circuit or by calling, faxing, or writing the following numbers or address: voice – (415) 556-6158; fax – (415) 556-6179; mail—U.S. Courts for the Ninth Circuit, Office of the Circuit Executive, P.O. Box 193939, San Francisco, CA 94119-3939, (Attn: Bankruptcy Recruitment –Oregon). **Application deadline: Wednesday, March 31, 1999.**

BANKRUPTCY JUDGESHIP, District of Montana, Butte
The U.S. Courts for the Ninth Circuit are recruiting to fill a vacancy on the bankruptcy court for the District of Montana. Chambers are in Butte, and service will commence November 1999. See qualifications, salary, and application information above. Address inquiries Attn: Bankruptcy Recruitment—Montana. **Application deadline: Tuesday, April 20, 1999.**

BANKRUPTCY JUDGESHIP, Northern District of Texas at Dallas, and Northern District of Texas at Lubbock
The U.S. Court of Appeals for the Fifth Circuit seeks applications from all highly qualified candidates for a 14-year appointment as a U.S. bankruptcy judge in the Northern District of Texas at Dallas and the Northern District of Texas at Lubbock. Salary: $125,764. Only those persons with a law degree whose character, experience, ability, and impartiality qualify them to serve in the judicial branch should apply. Qualifications standards and an application form may be obtained by writing to Gregory A. Nussel, Circuit Executive, U.S. Courts of Appeals, Fifth Circuit, 600 Camp Street, New Orleans, LA, 70130, or by visiting www.ca5.uscourts.gov. **Application deadline: May 14, 1999.**

CLERK OF COURT, District Court for the Western District of Missouri
The District Court for the Western District of Missouri seeks qualified applicants for the position of clerk of court. Resident station: Kansas City, MO. Applicants must have an undergraduate degree and a minimum of 10 years of progressively responsible administrative experience in public service or business. Applicants must have a thorough understanding of personnel management, experience with developing spending plans and monitoring automation systems. Advanced degree in law, business or public administration advantageous. Salary: JSP-17 ($107,273 to $117,907). Notice available at www.law.umkc.edu/fdcwm/index.html. Submit letter and six copies of application, qualifications, and a detailed resume to Chief Judge D. Brook Bartlett, Rm. 8552, Charles Evans Whittaker U.S. Courthouse, 400 East 9th Street, Kansas City, MO 64106. Mark envelope "Confidential." **Application deadline: April 1, 1999.**

DEPUTY DIRECTOR, State Justice Institute
The State Justice Institute, a non-profit organization established by Federal law to award grants to improve the quality of justice in State courts nationwide, seeks a Deputy Director responsible for managing the grant program. The Deputy Director serves as Chief of the Institute's Program Division, which is responsible for reviewing grant proposals and monitoring grantees' substantive performance, and has a prominent role in formulating Institute grant policies, including the annual Grant Guideline. Qualifications include a thorough understanding of the substantive and administrative issues facing state courts; experience in grant-making; experience in supervising a multidisciplinary staff; excellent writing, editing, speaking, and word processing skills; the capacity for seeing the big picture while paying close attention to detail; and the ability to work cooperatively with others. J.D., M.P.A., or equivalent experience required. Excellent benefit package. Salary commensurate with experience. Please send resume and salary history to Personnel, State Justice Institute, 1650 King Street, Suite 600, Alexandria, VA 22314.

CHIEF PRETRIAL SERVICES OFFICER, Northern District of Illinois
Applications are being accepted for the position of Chief Pretrial Services Officer for the Northern District of Illinois, Chicago, Illinois. Salary range: $68,849 to $119,899. A bachelor's or master's degree in the social sciences, criminal justice, public administration or related field(s), or a law degree is required, as well as a minimum of nine years of progressively responsible administrative, technical, and managerial experience, with a minimum of six years experience at the supervisor level. Applicants much possess the following years of specialized experience, one of which must have been in the next lower grade or equivalent: JSP-14, six years of experience; JSP-15, seven years of experience, JSP-16, eight years of experience. First-time appointees to positions covered under law enforcement officer retirement provisions must not have reached their 37th birthday at the time of appointment. Candidates must have a performance history that demonstrates proven skill in managing limited resources against multiple demands, strong organizational prioritizing and problem solving skill, and solid oral and written communication skills. Submit a cover letter with detailed resume of qualifications and experience, including salary history, letters of reference (both professional and personal), and other materials that support the applicant's qualifications to Personnel Manager, U.S. District Court for the Northern District of Illinois, 219 South Dearborn Street, Room 2052, Chicago, Illinois 60604. 24-hour job line: (312) 435-7633. **Application deadline: May 28, 1999.**

EXECUTIVE DIRECTOR, Federal Community Defenders, Inc., Northern District of Indiana,
The Northern District of Indiana Federal Community Defenders, Inc., (FCD) a newly created community defender organization for the Northern District of Indiana, is accepting applications for the position of Executive Director. The Executive Director will be responsible for the initial organization and staffing of the office, will manage the program, and will carry a substantial caseload. Principal office: Hammond, with service to the South Bend and Fort Wayne Divisions. Position available September 1, 1999. Salary: $118,400. For application materials contact the offices of the Clerk for the U.S. District Court for the Northern District of Indiana in Hammond, South Bend, Fort Wayne, and Lafayette, or send a self-addressed, 9x12 envelope with $0.99 postage to: Northern District of Indiana Federal Community Defenders, Inc., c/o U.S. District Court, 204 South Main Street, South Bend, IN 46601. Attn: Personnel Officer, "Confidential." **Application deadline: May 1, 1999.**

Legislation Revisits Issues Raised in Last Congress

If legislation introduced so far in the first session of the 106th Congress looks a lot like legislation from the 105th Congress, there is a good reason. Many key bills from the last Congress were either left in committee or stranded on the House or Senate floor without a final vote and some, like the Bankruptcy Reform Act, have been reintroduced for another try in this session. Other bills are perennial favorites, such as comprehensive crime bills, and nearly every Congress sees a version introduced, amended, and passed in some form. One topic, however, that will be peculiar to the 106th Congress will be the Year 2000 (Y2K) issue. Several Y2K bills that may affect the Judiciary already have been introduced.

Crime Bills

S. 9, the Safe Schools, Safe Streets, and Secure Borders Act Of 1999, was introduced by Senator Thomas A. Daschle (D-SD). Senator Patrick Leahy (D-VT), one of the bill's co-sponsors, called S. 9 an updated version of a 1998 comprehensive crime bill. Juvenile crime also is on the legislative agenda with the introduction of **S. 254, the Violent and Repeat Juvenile Offender and Rehabilitation Act of 1999,** introduced by Senator Orrin Hatch (R-UT), chairman of the Senate Judiciary Committee. While no major comprehensive juvenile crime bill has been introduced by the House leadership, the House Judiciary Committee held two days of hearings on juvenile crime in early March and legislation is expected later this spring.

Congress is once again considering proposals for a constitutional amendment on crime victims' rights, such as **S. J. Res. 3**, introduced by Senator Jon Kyl (R-AZ). **S. 9, the Safe Schools, Safe Streets, and Secure Borders Act of 1999**, provides a statutory alternative to a victims' rights amendment.

Representative Sheila Jackson Lee (D-TX) has introduced **H.R. 77, the Hate Crimes Prevention Act of 1999,** which would provide for federal prosecution of a significant number of crimes that are traditionally prosecuted in the state courts.

Speaking to an issue raised by the U.S. Sentencing Commission in 1997, Senator Spencer Abraham (R-MI) addressed the punishment disparity between crack and powder cocaine in his bill **S. 146, the Powder Cocaine Sentencing Act of 1999.** Abraham's bill, already referred to the Judiciary Committee, would reduce the disparity between punishments for crack and powder cocaine by increasing the penalties for powder, lowering the amount necessary to trigger a five-year mandatory minimum sentence for possession of powder cocaine from 500 grams to 50 grams, and the amount necessary to trigger a 10-year mandatory minimum from five kilograms to 500 grams. The U.S. Sentencing Commission recommended that the disparity between crack and cocaine punishments be mitigated by increasing the amounts necessary to trigger a mandatory sentence for possession of crack.

Bankruptcy

H.R. 833, the Bankruptcy Reform Act of 1999, was introduced in February by Representative George W. Gekas (R-PA), chair of the Judiciary Subcommittee on Commercial and Administrative Law. Through a needs-based system, the legislation would ensure that high-income filers who could repay some of what they owe are required to do so. The bill would authorize 18 new bankruptcy judgeships and extends several temporary bankruptcy judgeships. Senator Charles E. Grassley (R-IA), chair of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, also is expected to introduce bankruptcy reform legislation.

Y2K

A number of bills that would limit lawsuits arising from computer program failures in the year 2000 have been introduced. Generally, the bills require plaintiffs and defendants to attempt a solution to a Y2K computer problem before a suit can be filed. The bills establish national procedures in state and federal courts for Y2K claims and limit defendants' exposure to such suits, in part, by capping punitive damages. In addition, they require certain information to be included in a Y2K complaint, encourage the use of alternative dispute resolution, and expand federal jurisdiction over Y2K class actions. **H.R. 775, Year 2000 Readiness and Responsibility Act**, was introduced in the House by Thomas M. Davis (R-VA). **S. 96, the Y2K Act,** was introduced in the Senate by Senator John McCain (R-AZ) and already has been reported favorably by the Senate Committee on Commerce, Science, and Transportation. **S. 461, the Year 2000 Fairness and Responsibility Act** was introduced in the Senate by Senators Orrin G. Hatch (R-UT) and Dianne Feinstein (D-CA). A hearing on the bill was held March 1, at which the Department of Justice voiced its concerns with **S. 461** and the substantial restrictions it may place on litigants' ability to pursue legitimate claims.

JUDICIAL MILESTONES

Appointed: William A. Fletcher, as U.S. Court of Appeals Judge for the Ninth Circuit, February 1.

Appointed: David O. Carter, as U.S. District Judge for the Central District of California, January 5.

Appointed: Lawrence J. O'Neill, as U.S. Magistrate Judge for the Eastern District of California, January 26.

Appointed: Sally A. Shushan, as U.S. Magistrate Judge for the Eastern District of Louisiana, February 1.

Appointed: Michael J. Watanabe, as U.S. Magistrate Judge for the District of Colorado, February 12.

Appointed: Jerry W. Venters, as U.S. Bankruptcy Judge for the Western District of Missouri, February 1.

Elevated: Judge James T. Giles, to Chief Judge, U.S. District Court for the Eastern District of Pennsylvania, January 1, succeeding Judge Edward Cahn, January 1.

Elevated: Judge Paul R. Matia, to Chief Judge, U.S. District Court for the Northern District of Ohio, February 27, succeeding Judge George W. White.

Elevated: Judge William G. Young, to Chief Judge, U.S. District Court for the District of Massachusetts, January 2, succeeding Judge Joseph L. Tauro

Senior Status: Chief Judge Richard H. Battey, U.S. District Court for the District of South Dakota, January 1.

Senior Status: Judge Norma L. Shapiro, U.S. District Court for the Eastern District of Pennsylvania, December 31.

Senior Status: Judge Stanley Sporkin, U.S. District Court for the District of Columbia, February 12.

Senior Status: Chief Judge George W. White, U.S. District Court for the Northern District of Ohio, February 26.

Retired: Judge Benjamin F. Gibson, U.S. District Court for the Western District of Michigan, January 31.

Resigned: Bankruptcy Judge Karen M. See, U.S. Bankruptcy Court for the Western District of Missouri, January 31.

Deceased: Retired Associate Justice Harry A. Blackmun, Supreme Court of the U.S., March 4.

Deceased: Bankruptcy Judge Alfred C. Hagan, U.S. Bankruptcy Court for the District of Idaho, January 20.

Deceased: Senior Judge Mary Johnson Lowe, U.S. District Court for the Southern District of New York, February 27.

Deceased: Bankruptcy Judge James E. Yacos, U.S. Bankruptcy Court for the District of New Hampshire, December 30.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of March 1, 1999

Courts of Appeals	
Vacancies	17
Nominees	7
District Courts	
Vacancies	43
Nominees	12
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	27

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

ABA Survey Shows Belief in Justice System

The American public believes its justice system is the best in the world, despite its flaws, according to survey results released by the American Bar Association. The survey on the perception of the U.S. justice system asked 1,000 respondents across the country what they knew about their justice system and their attitudes towards it. In an assessment of the justice system and other U.S. institutions, half of the respondents showed strong confidence in the U.S. Supreme Court, while a third felt strongly confident in the other federal courts. Just 18 percent showed strong confidence in Congress. But the media fared the worst. Only eight percent of those surveyed reported strong confidence in them.

The study found that "the more knowledge people have about the justice system, the greater their confidence in the justice system overall. . . " However, the survey also indicated that knowledge of the justice system is uneven. Only 39 percent could identify the three branches of government. And while 9 percent knew that anyone accused of a crime had the right to counsel, only two-thirds knew a criminal defendant is innocent until proven guilty.

Of the survey participants, 78 percent believed the jury system was the most fair way to determine the guilt or innocence of an accused person. However, 68 percent believed lawyers spend too much time getting criminals released on technicalities, and 99 percent strongly felt that wealthy people or companies often wear down their opponents by dragging out legal proceedings. As a result, 78 percent felt court takes too long and 77 percent said it was too costly.

	Strongly Agree /Agree	Neither Agree Nor Disagree	Strongly Disagree /Disagree
It takes too long for courts to do their job.	78	9	12
Juries are the most important part of our judicial system.	69	10	21
Generally, court personnel are courteous, helpful and polite.	61	19	19
Courts use information technology effectively.	43	29	26
Court decisions should reflect the majority of public opinion	35	7	57
Courts are effective in informing the public about court procedures and services.	28	15	56
In most cases, the courts treat all ethnic and racial groups the same.	39	14	47

Source: ABA, Perceptions of the U.S. Justice System, 1999, M/A/R/G® Research

Eighty-nine percent of the respondents had participated in court proceedings, a considerable increase over the 43 percent counted in 1978 surveys. More men than women said they were knowledgeable about the justice system, and registered voters also believed themselves to be knowledgeable. People who knew the least about the justice system tended to be non-white, female, in the 18-29 age group, not highly educated, not registered to vote, and from lower income households. Those indicating interest in learning more appeared to be younger, middle income, non-white and college educated. Slightly over half of the survey respondents felt courts were not effective in informing the public about court procedures and services, although 57 percent of respondents said serving on a jury was an extremely or very important source of information. Almost all respondents thought schools should be required to teach about the justice system.

Most people learned about the justice system in school, and 67 percent said they learned through personal experience, with half the people saying jury duty was considered an important part of this experience. Who did they want to teach them about the justice system? Seventy-five percent of the respondents wanted judges.

Of the survey participants, 54 percent either strongly agreed or agreed that most judges are extremely well qualified for their jobs. Only 14 percent strongly agreed or agreed that judges are not paid enough.

The report is available at http://www.abanet.org/media.

Defenders Have Committee Support

An interview with Judge Robin J. Cauthron, chair of the Judicial Conference Committee on Defender Services.

Q: In his *1998 Year-End Report*, the Chief Justice urged Congress to give serious consideration to paying all panel attorneys the $75 rate. Why is this an important issue?

A: In most districts Criminal Justice Act (CJA) private panel attorneys have received only one $5 increase to the $60 in-court/$40 out-of-court hourly rates that were set more than 14 years ago. Since the purchasing power of these rates has eroded by nearly 35 percent, it is not surprising that often the rates do not even cover an attorney's overhead expenses. While the Judicial Conference has authorized the alternative $75 rate for all but one judicial district, Congress has allowed us to implement the higher amounts across-the-board in only eight districts, and partially in eight others. As the Chief Justice stated in his *Year-End Report*, the Judiciary is responsible for ensuring that defendants who cannot afford counsel in criminal cases are provided with attorneys capable of vindicating their rights. Our inability to pay fair compensation to the lawyers we appoint threatens our ability to fulfill this critical responsibility, and indeed, judges are now reporting that the low hourly rates are compromising their ability to find qualified attorneys to represent defendants.

Q: Is there support outside the Judiciary for this increase?

A: I have been extremely gratified by the recognition from outside the Judiciary of the critical importance of the Judiciary's request for the $75 CJA hourly rate. Our request has been endorsed not only by private bar associations (including the American Bar Association, the National Association of Criminal Defense Lawyers, and the National Legal Aid, and Defender Association) but also by the Department of Justice. The Department's support is particularly significant. All three components of the federal criminal justice system—courts, prosecution, and defense—agree that compensation for defense counsel is inadequate and threatens the proper functioning of the system. Hopefully, Congress will be persuaded to provide funding needed to implement this long-overdue adjustment. Private associations of Judiciary officials also have expressed support for this initiative. The Federal Judges Association, the Federal Magistrate Judges Association, and the Association of Federal Defenders endorsed the $75 rate to ensure the appointment of qualified and experienced counsel.

Q: Over the last few years, Congress has closely scrutinized the federal defender program. What have been its concerns?

A: Congress has expressed concern about the growth in Defender Services spending. In particular, Congress wanted to know why costs were increasing at a higher rate than the rise in caseload. Judiciary studies undertaken to address these concerns

Judge Robin J. Cauthron (W.D. Okla.)

revealed that, overall, defender services costs are in line with the increase in the number of representations, the growing proportion of the more costly capital prosecutions and capital habeas representations, and the costs incurred in a few extraordinarily expensive representations each year. Between fiscal years 1993 and 1999, the number of appointments under the Criminal Justice Act grew from 84,000 to an anticipated 108,500. In fiscal year 2000, it is projected that these appointments will number over 114,700. As the workload of the Defender Services Program increases, the Judiciary will continue to look for ways to contain costs while providing effective representation as required by the Constitution and congressional mandates.

Q: What is the Judiciary doing to contain costs and ensure that the program is well managed?

A: Although the Judiciary cannot control the workload

f the Defender Services Program, n recent years we have energetically nd creatively sought ways to make he most effective use of the funds hat Congress provides for the rogram. Some of these include eveloping a comprehensive erformance measurement system o better assess the value received or the Defender Services Program ollar; routinely assessing the anagement of federal defender rganizations to help the offices mprove the effectiveness and fficiency of their operations; imple-enting budgetary procedures to ontrol federal defender organiza-on spending; conducting a pilot roject to explore the benefits of sing a supervisory attorney to assist ith administering the panel of rivate attorneys accepting court ppointments; and replacing the out-oded system for making compen-ation payments to private panel ttorneys and expert service provid-rs with a more efficient payment ystem.

Q: What part will the new CJA improved payment system lay in cost containment and man-gement?

A: The new CJA Panel Attorney Payment System will pro-ide courts with on-line, consistent, otal cost summaries not previously vailable for CJA panel attorney epresentations. The new system ollects and aggregates all represen-tion costs paid for an individual—ncluding payments to attorneys and xperts and for transcripts and travel xpenses. At any point in the pro-ess, individual courts will have ccess to locally generated reports or n-line screens reflecting accumu-ted cost data for representations in eir districts. This information can ssist the judicial officer's voucher eview for individual representations nd provide the court with informa-tion to use in developing case budgets for large, complex cases. The new system also provides added internal controls to reduce the possibility of duplicate payments and other opportunities for fraudulent activities.

The new system will permit entry of case details from the very beginning of the case when CJA panel counsel is appointed and also will capture important new data elements not previously collected—such as those associated with case disposition. At the same time, data elements such as the docket number and offense code will be consistent with those used in other Judiciary information systems. This will make it possible for the AO to perform additional data analyses without requiring court personnel to enter substantial amounts of information separately into different systems. These refinements will assist the AO in projecting and explaining national CJA panel costs.

Q: In the last year, several new federal defender offices have been authorized to open around the country. What is the Judicial Conference position on the establishment of these offices and what is the status of the overall program?

A: Four new federal defender organizations, covering five judicial districts (Indiana-Northern, New York-Northern and Vermont [combined], South Dakota, and Utah), will open sometime this year. When they do, we will have a total of 67 federal defender organizations covering 78 districts, a growth of 32 districts (70 percent) in the 1990s. The Judicial Conference fully supports the opening of new defender offices. Federal defender organizations provide high quality representation because their attorneys are federal criminal law specialists who receive regular training and understand the intricacies of the sentencing process. They also serve as a resource to CJA panel attorneys and relieve courts of much of the administrative burden related to the appointment and compensation of counsel. As a matter of fact, in a survey conducted of district court chief judges in 1997 and 1998, 84 of the 88 respondents (over 95 percent) rated the quality of legal services provided by federal defender organizations as "excellent" or "very good."

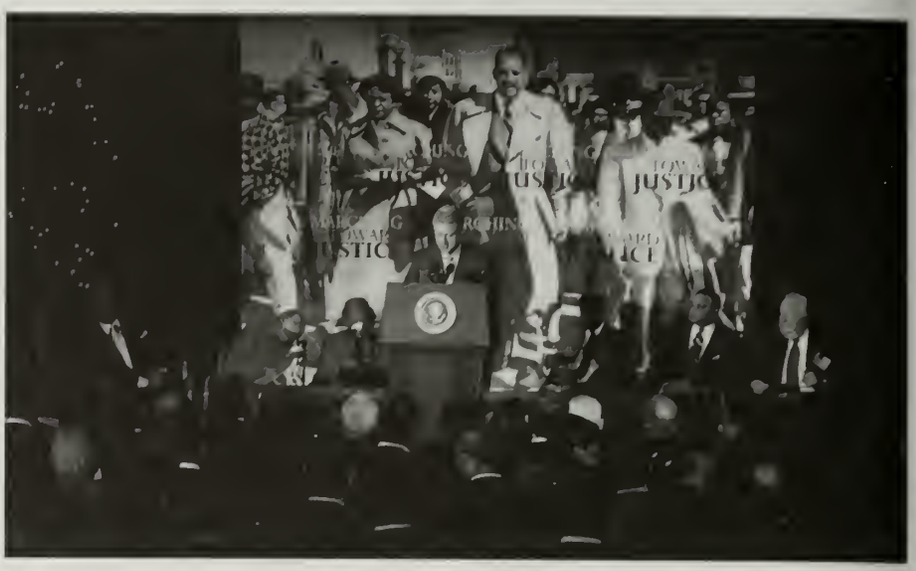
Q: Looking to the future, what long-range planning and budgeting initiatives is the committee pursuing for the defender services program?

A: The committee always has deemed planning for the future of the Defender Services program as one of its core responsibilities. All the initiatives we are pursuing, including the increase in the rate of pay for CJA panel attorneys and the cost-containment activities, advance the goals and objectives of the Defender Services program as articulated in the *Long Range Plan for the Federal Courts*. Recently, however, the Committee on Defender Services decided to modify its approach to long-range planning and budgeting in response to a request from the Administrative Office and the Judicial Conference that committees prepare for the possibility of increasingly tight budgets in the coming years. The Committee on Defender Services has formed a Subcommittee on Long Range Planning and Budgeting, which is exploring ways to set program priorities linked to budget projections for up to five years into the future.

"Marching Toward Justice" Exhibit Unveiled at AO

An 800-square foot exhibit tracing the black experience in America from early colonization through the 1950s was on display in February at the Thurgood Marshal Federal Judiciary Building. Opening ceremonies on February 3 drew such luminaries as Rosa Parks; Cecilia Marshall, widow of the late Supreme Court justice; and President Bill Clinton.

Titled, Marching Toward Justice: the History of the 14th Amendment, the exhibit was commissioned by the Damon J. Keith Law Collection of African-American Legal History at Wayne State University in Detroit. Judge Keith (6th Cir.), who was instrumental in bringing the exhibit to Washington, served as master of ceremonies for the opening. In photographs, drawings, and reproductions of documents, the exhibit covers such topics as slavery, black soldiers in the Civil War, the Emancipation Proclamation, and ratification of the 14th Amendment in 1868. It also highlights subsequent historical developments, such as the Reconstruction Era and the role of Thurgood Marshall, Charles Houston, and other African-American lawyers in making the 14th Amendment a reality. The exhibit will travel to New York City following its display in Washington.



President Bill Clinton spoke at the opening of the Marching Toward Justice exhibit joined on the dias by (left to right) Judge Damon Keith; Ms. Rosa Parks; Mrs. Thurgood Marshall; Irving D. Reid, President of Wayne State University; H. Patrick Swygert, President of Howard University; and AO Director Leonidas Ralph Mecham.

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FEDERAL DEPOSITO

Chief Justice Urges Congress to Release Judiciary

On March 17, 1999, Chief Justice William H. Rehnquist sent the following letter to congressional leadership, including House and Senate leaders of the judiciary and appropriations committees. Several have replied favorably.

"I am writing to urge that appropriations for the federal Judiciary promptly be released from the June 15, 1999, cutoff date that is currently provided in our appropriations act. Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, 1999, P.L. 105-277, title VI, sec. 626.

It is universally recognized that this June 15 cutoff of the three cabinet departments and the Judiciary was enacted to ensure that the legislative and executive branches will come to an agreement prior to the end of this fiscal year on the proper means of conducting the 2000 census. The judicial branch should not, and does not, have any role in this debate, as the resolution of this issue very properly rests with the political branches of government. The Judiciary's appropriations should, therefore, also be free from entanglement in this political dispute.

If funding for the Judiciary were to be cut off because of its inclusion in the June 15 cutoff date, every sector of the judicial branch will be affected, including probation and pretrial services officers who supervise 120,000 released criminals and those accused of crimes. The public will be denied the services and the protections that they expect and to which they are entitled. Respect for a separate and coequal branch of government suggests the Judiciary be assured it can continue its full level of operations at the funding level already approved.

Three years ago in fiscal year 1996, a similar political situation obtained and resulted in funding lapses throughout much of the government, including initially the Judiciary. Congress quickly came to recognize the inappropriateness of freezing funds for the courts, however, and passed a special free-standing appropriation for the Judiciary two months before the impacted executive branch agencies were funded for the full fiscal year. In the same spirit which has motivated that action, I urge in the strongest possible terms that funding for the Judiciary quickly be made available for the remainder of this fiscal year."

Sincerely,

William H. Rehnquist

Judicial Conference Seeks New Judgeships, Adequate Compensation

Spurred by increasing caseloads and the rapidly declining value of judicial salaries, the Judicial Conference last month voted to ask Congress to create new judgeships and to adjust the pay of the President, judges, members of Congress, and senior executive branch officials.

In agreeing to vigorously seek an annual pay adjustment for government leaders, the Conference also called for an easing of the pay compression for officials in all three branches of government by supporting an increase in the President's salary. The President's salary ($200,000 a year) has not changed in the past 30 years, and any change that were to occur would be barred by Article II of the Constitution from affecting the current President. However, if the President's salary is not adjusted before January 20, 2001, it will remain fixed at least until the next presidential oath of office on January 20, 2005.

Between 1789 and 1987 the salaries of the Vice President, Speaker of the House, and Chief Justice have varied between 16

*See **Conference** on page 2*

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and 58 percent of the President's salary. Currently they are 88 percent of the President's salary. The problem of salary compression also means that some senior government officials are paid nearly as much and in some cases more than judges. Since 1969, inflation has gone up 100 percent more than the growth in judges' salaries over the same time period. Each judge's annual salary is worth about $22,000 less today than it was in 1992.

At its biannual meeting, the Conference also agreed to transmit to Congress a request for an additional seven permanent and four temporary judgeships in the courts of appeals and 33 permanent and 25 temporary district judgeships. The 69 judgeships requested is up from the 53 judgeships requested two years ago. The Conference also will ask Congress to convert 10 existing temporary judgeships to permanent positions in the district courts. New judgeships were last created in 1990. Since then, appeals filings have climbed by more than 30 percent and the number of cases filed in the district courts has increased by more than 20 percent.

In addition, in recognition of congressional interest in judicial vacancies, for the first time the Conference used a process for evaluating the workload situation in district courts with low weighted caseloads where it may be appropriate to recommend not filling or eliminating a vacant judgeship. A similar process was used for courts of appeals, but none of the courts subject to the Conference standards met the criteria. As a result, the Conference recommended that a single existing or future vacancy *not be filled* in four districts: the District of Delaware, the District of Columbia, the District of Wyoming, and the Southern District of West Virginia. Presently, only the District of Columbia has a judicial vacancy. There are three vacant positions on the court.

In determining which courts may be suitable for such a recommendation, the Conference Committee on Judicial Resources first identified district courts where the per judgeship weighted filings over the last three years would be below 365 *with* one fewer judgeship. The status of each court will be reviewed as part of the regular biennial survey of judgeship needs.

In other action, the Conference

■ Voted to oppose the provisions expanding federal court jurisdiction over Y2K class actions in bills (S. 96, S. 461, and H.R. 775) currently under consideration by the 106th Congress. Eliminating the amount in controversy and permitting minimal diversity for Y2K class actions in federal court could be expected to shift most of this litigation into federal court. Federalization of class actions would deprive the judicial system of the contributions that state courts would otherwise make in meeting the substantial burdens that Y2K litigation may impose. One of the primary objectives of this legislation is to facilitate the resolution of Y2K claims, and this shift of class action litigation holds the potential for overwhelming the federal courts, resulting in substantial costs and delays. In addition, the proposed Y2K class action amendments are inconsistent with the objective of preserving the federal courts as tribunals of limited jurisdiction and the reality that the federal courts are staffed and supported to function as courts of limited jurisdiction.

■ Received a report on the impending cut-off of all Judiciary appropriations on June 15, 1999. When Congress and the President agreed on the Commerce, State, Justice, the Judiciary, and Related Agencies appropriations bill for fiscal year 1999, they provided sufficient funds for operations only until June 15. Because Congress and the Administration could not reach an agreement on the upcoming census, only partial funding was provided for the Department of Commerce, which administers the census. The Judiciary's funding is contained in the same bill. While the Court has ruled in the census matter, the dispute does not appear to be resolved. As a result, judicial branch funding is trapped in a disagreement between the Democrats and Republicans in Congress and the White House. As a separate, independent branch of government, the Judiciary should not be caught in the middle of a political dispute between the other two branches. Unless the Judiciary is removed from this dispute and funded through the remainder of the fiscal year, funds appropriated to operate the federal court system will run out on June 15.

■ Adopted a resolution calling for immediate necessary action to preserve the existing relationship between judges and the Federal Employees Group Life Insurance (FEGLI) program. The resolution states that administrative action by the Office of Personnel Management effectively doubles the FEGLI premiums of hundreds of Article III judges ages 70 and over. This action poses a serious threat to the financial security of the families of sitting judges and the future stability of the Judiciary, since many judges have reasonably relied on FEGLI as the keystone of their financial and estate planning. It could destroy the senior judges system.

■ Endorsed the use of technologies in the courtroom subject to the availability of funds and priorities set by the Conference Committee on Automation and Technology. In addition, the Conference urged courtroom technology—including video evidence presentation systems, videoconferencing systems, and

lectronic methods of taking the ecord—be considered as necessary nd integral parts of courtrooms ndergoing construction or major enovation and that these technolo- ies be retrofitted into existing ourtrooms or those undergoing lterations as appropriate.

Voted to continue to support the fforts of its Committees on Codes of onduct and Financial Disclosure to ducate and inform judges of their re- isal responsibilities in lieu of en- ouraging all courts to maintain in the erk's office a recusal list for each dge that would be available to liti- ants upon written request. Although ie Conference did not mandate use f recusal lists, information about iem will be distributed nationwide so that judges can determine individually how best to proceed. Relevant Judicial Conference committees already have enhanced education and training in an attempt to ensure that judges are aware of their recusal responsibilities and are developing model checklists for judges to use in preparing recusal lists that can be used to identify conflicts.

■ Agreed to amend the Travel Regulations for United States Justices and Judges to add a requirement that non-case related official travel be reported to the appropriate chief judge. Senator Charles E. Grassley (R-IA) had held various pieces of judicial legislation in his Judiciary Subcommittee on Administrative Oversight and the Courts until the Judiciary agreed that judges would make travel reports in the same manner as members of Congress.

■ Agreed to transmit to Congress proposed legislation to create 24 new bankruptcy judgeships. New bankruptcy judgeships last were established in 1992. The number of bankruptcy filings has increased by nearly 500,000 from 1992 to 1998. Two years ago only 18 judgeships were requested.

■ Elected to the Board of the Federal Judicial Center: Judge Robert M. Parker (5th Cir.), to replace Judge Bruce Selya (1st Cir.); and Judge William H. Yohn, Jr. (E.D. Pa.), to replace Chief Judge Richard Matsch (D. Colo.).

udges and Justices Turn Out for Judicial Conference Reception at Supreme Court

Judge Rya W. Zobel (D. Mass.), who is retiring as director of the ederal Judicial Center in July, was the guest of honor at a Supreme ourt reception hosted by Chief Justice William H. Rehnquist and dministrative Office Director Leonidas Ralph Mecham, following the larch meeting of the Conference. Zobel has served as director of the ederal Judicial Center since 1995. Several associate justices and iembers of the Judicial Conference, along with executive staffs of the ederal Judicial Center and the Administrative Office, attended. The hief Justice presented Zobel with a resolution expressing the Confer- nce's gratitude "for her dedication to the administration of the federal ourts in her service as Director of the Federal Judicial Center."

hief Justice William H. Rehnquist and Judge Wm. Terrell Hodges (M.D. Fla.) at the upreme Court reception.

Top: Judge Rya W. Zobel receives the Judicial Conference resolution honoring her years as Federal Judicial Center Director from Chief Justice William H. Rehnquist.

Above: Administrative Office Director Leonidas Ralph Mecham and Justice Byron White at the Supreme Court reception.

Caseload Increase Since Last Judgeship Bill Shows Need

New federal judgeships were last created by Congress in 1990. Since that time the caseload in both the courts of appeals and the district courts has continued to increase substantially. The number of appeals filed in the courts of appeals has grown by more than 30 percent since 1990 while district court case filings are up more than 20 percent. The Judicial Conference bases its recommendation for additional judgeships upon a biennial survey of needs, which includes reviews of a court's request and justification, an evaluation of how the court uses current resources, and the recent caseload per authorized judgeships. For courts of appeals, the Conference uses annual filings per authorized three-judge panel, adjusted to weight pro se cases as one-third of a case, as its primary measure of need. An adjusted level of 500 per panel is used as the standard for considering requests for additional judgeships.

For district courts, the Conference uses weighted filings as its primary measure. The weights provide a means of accounting for differences in the time required for judges to resolve various types of civil and criminal actions. A weighted caseload per judgeship of 430 or better is a Conference standard for considering requests for new judgeships.

The overall increase of 32 percent in the appeals caseload has been driven primarily by a 74 percent increase in prisoner appeals. Appeals of other civil cases increased 18 percent since 1990, while criminal appeals rose 9 percent. Reviews of administrative agency decisions, up nearly 50 percent, also have grown substantially since 1990.

In the district courts, the total number of cases filed has grown by approximately 22 percent since 1990. Civil filings were 29 percent higher in 1998 than in 1991. The growth was the result of increases in personal injury product liability cases (145.5 percent), civil rights cases (112.9 percent), Social Security cases (71.4 percent), copyright, patent and trademark cases (49.4 percent), and prisoner petitions (29.3 percent). For example, following the enactment of the Civil Rights Act of 1990, filings rose from 19,892 in 1991 to 42,007 in 1996. Prisoner civil rights cases increased through most of the years, but fell after prison litigation reform legislation was passed in 1996. (See story on page 6.) Significant increases in mass tort filings of asbestos and breast implant cases contributed to the overall increase in personal injury product liability filings.

The number of criminal cases filed since 1991 increased 25 percent with the number of criminal defendants rising 21 percent. Some of the major categories of criminal cases saw substantial increases in that time. Drug-related filings increased 39 percent. Immigration filings more than quadrupled from 1991 to 1998. And although the number of fraud cases has fluctuated, the number of cases increased 20 percent since 1991.

Justice Harry A. Blackmun Laid to Rest

Retired Associate Justice Harry A. Blackmun died March 4 at the age of 90 from complications following hip-replacement surgery. Appointed by President Richard M. Nixon to the Supreme Court, Blackmun served 24 years, retiring in 1994. Chief Justice William H. Rehnquist called him "a worthy successor to the predecessors in the seat which he occupied—Joseph Story, Oliver Wendell Holmes, Benjamin Cardozo, Felix Frankfurther," and said he would be missed by his friends and colleagues. President Clinton praised Blackmun as a great American citizen. "Every decision and every dissent," said Clinton, "was firmly grounded in the Constitution he revered, and his uncanny feel for the human element that lies just beneath the surface of all serious legal argument."

Justice Blackmun lay in repose in the Great Hall of the Supreme Court on the same catafalque used for President Abraham Lincoln in 1865. The flag that draped the casket had also draped the casket of Blackmun's father.

Is There a COLA on the Horizon?

Congressional leaders are not committing themselves completely to a pay raise for members of Congress—and by extension, one for federal judges and top executive branch employees. And yet there have been rumblings they might, as reported by the media. Speaker of the House J. Dennis Hastert (R-IL) has indicated his support for an increase for members, as has House Minority Leader Richard Gephardt (D-MO). Senator Thomas Daschle (D-SD), in a general discussion on a Sunday morning talk show, said it was time for a cost-of-living adjustment for members of Congress, but declined to say how much. Senate Majority Leader Trent Lott (R-MS) also reportedly favors a COLA this year. A growing list of Members from both sides of the aisle have made statements in support of—and against—salary relief.

The Judicial Conference Committee on the Judicial Branch, Administrative Office Director Leonidas Ralph Mecham, AO staff, and the judges associations are strongly urging Members of Congress and top executive branch officials to support a pay adjustment for judges and other high level government officials in January 2000. In connection with this effort, Judge David R. Hansen (8th Cir.), chair of the Judicial Branch Committee, and Director Mecham are scheduled to meet with Speaker Hastert in April to discuss pay issues.

Under federal law, judges and members of Congress are automatically eligible to receive an annual cost-of-living increase when rank and file government employees receive theirs. This year a recommended 4.4 percent increase is contained in the annual spending bills for general schedule employees. If there is a COLA, federal judges might receive a pay adjustment of 3.4 percent.

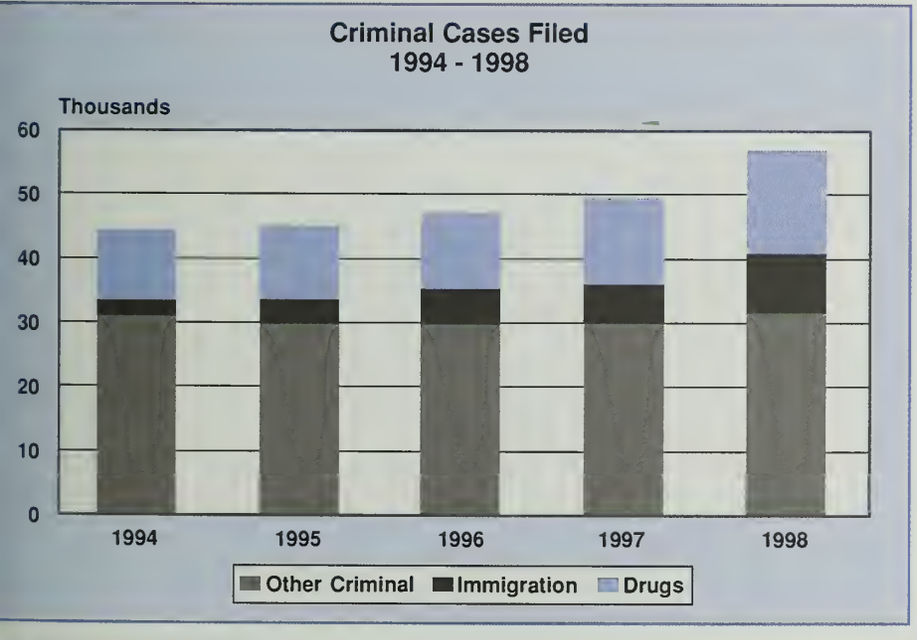
However, only once since 1993 have members taken a COLA or permitted one for judges. In past sessions, provisions denying cost-of-living adjustments for Members have been included in appropriations bills. As a consequence, the value of a district court judge's salary is worth $22,000 less today than it was in 1992.

The Judicial Branch Committee, the AO, and the judges associations also are working cooperatively on long-term solutions to the problem of salary compression.

Federal Courts Report Record Caseloads Again

The federal Judiciary, which reported historic caseload levels in fiscal year 1997, has reported record numbers of cases for FY98 in most program areas, according to statistics compiled by the Administrative Office. The Judiciary's fiscal year ends October 1. The 1998 caseload statistics can be found at www.uscourts.gov.

Once again, record numbers of cases were filed in appellate and bankruptcy courts, which reported increases of 3 percent and 5 percent, respectively. Criminal case filings and the number of criminal defendants in cases filed in 1998 increased 15 percent and 13 percent respectively—the first double-digit percentage increases since 1972. However, the total number of civil and criminal filings in district courts went down 2 percent, due to a 6 percent drop in the number of civil cases filed. Civil case filings were still 9 percent higher in 1998 than in 1994. Despite these increases, no new Article III judgeships have been created in eight years. Bankruptcy cases filed have continued to climb, numbering well over a million since 1996, yet the number of authorized bankruptcy judgeships has not changed since 1992.



Courts of Appeals

For the third consecutive year, filings in the courts of appeals were at record-breaking levels, increasing 3 percent in 1998 to 53,805. The

*See **Caseloads** on page 6*

Caseloads continued from page 5

growth was due to a 6 percent increase in civil appeals and a 4 percent increase in bankruptcy appeals.

In 1998, prisoner petitions rose 8 percent. This increase, coupled with a 7 percent increase in civil rights appeals, drove an overall rise in appeals filed. Cases involving pro se litigants, 66 percent of whom are prisoners, rose 6 percent in 1998. Pro se cases make up 44 percent of all appeals filed. Bankruptcy appeals climbed 4 percent in 1998, and criminal appeals remained relatively stable, rising less than 1 percent. Increases were reported in the number of appeals related to immigration laws and drugs. Filings of administrative agency appeals and original proceedings declined 14 percent and 8 percent, respectively.

District Courts Criminal Caseload

In 1998, criminal case filings climbed 15 percent from 50,363 in 1997 to 57,691. The number of defendants grew 13 percent, from 70,201 to 79,008.

The combination of drug, fraud, and immigration filings accounted for 60 percent of all criminal cases and for 65 percent of all criminal defendants. Immigration filings rose 40 percent and accounted for 16 percent of all criminal cases and 13 percent of all criminal defendants. For the first time in 26 years, immigration filings exceeded fraud filings to become second only to drug filings in numbers of cases.

Drug case filings climbed 19 percent, while defendants in drug cases filed increased 14 percent. These record high levels resulted from increased resources made available to U.S. attorneys in districts along the nation's southwestern border.

Fraud case filings rose for the fourth consecutive year, growing 6 percent primarily because of fraud filings associated with immigration law violations and to a lesser extent because of lending institution and security and exchange fraud. After rising for three consecutive years, filings of false claims and statements cases declined 4 percent in 1998. Total weapon and firearms case filings climbed 14 percent, and defendants in such cases increased 11 percent.

Civil Caseload

Civil case filings decreased 6 percent in 1998, to 256,787—the first drop in civil filings in five years. The reduction was due primarily to a 6 percent drop in private cases related to both federal question and diversity of citizenship litigation. Filings involving the U.S. as defendant also fell.

The decline in federal question litigation was attributed mostly to a 22 percent reduction in personal injury cases, of which product liability filings (mostly breast implant cases) fell 26 percent. In addition, federal question litigation involving state prisoner petitions also fell.

Filings with the U.S. as defendant fell 12 percent, chiefly because of a drop in prisoner petitions filed by federal inmates and in motions to vacate sentence.

Legislation Has Mixed Effect on Petitions

The Prison Litigation Reform Act (PLRA) and the Antiterrorism and Effective Death Penalty Act (AEDPA), both enacted in 1996, contain provisions aimed at reducing prisoner petitions. The PLRA imposes mandatory filing fees; the AEDPA provides a one-year limitation period for filing state habeas corpus petitions and federal motions to vacate sentence. The two acts appear to have had a mixed effect on the number of prisoner petitions filed in federal courts.

In 1997, following enactment of these two bills, the number of prisoner petitions filed in appellate courts fell 5 percent. However, in fiscal year 1998 they were up 8 percent. Specifically, habeas corpus filings in appellate courts by state prisoners grew 36 percent, while motions to vacate sentence also rose 5 percent.

The number of civil rights prisoner petitions in appellate courts appeared to be affected the most by the PLRA. They dropped 20 percent from 1996 to 1997, including those addressing prison conditions. These petitions continued to fall 11 percent from 1997 to 1998.

In the district courts, the effect of the PLRA could be seen in a 7 percent drop in federal question litigation involving state prisoner petitions, mostly because prisoner petitions involving civil rights and prison conditions fell 8 percent.

Prisoner petitions filed by federal inmates dropped 34 percent in FY98 and motions to vacate sentence dropped 46 percent. These filings had risen markedly from 1996 to 1997, because of the AEDPA and the *Bailey v. U.S.* Supreme Court ruling, which restricted the imposition of enhanced penalties for using firearms in violent crimes or drug trafficking offenses. At that time, many federal prisoners serving such sentences sought to vacate them. The effects of *Bailey* and the AEDPA may be waning, as filings begin to return to lower levels. Combined, federal and state prisoner petitions declined 13 percent in FY98.

All times are Eastern Daylight Time

THE THIRD BRANCH

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ADVERSITY QUOTIENT: TURNING OBSTACLES INTO OPPORTUNITIES (PBS)
Advance registration required, May 12, 12:55 p.m.

CITIBANK TRAVEL & PURCHASE CARD UPDATE
May 10, 12:00 p.m., May 11, 8:30 a.m.

CIVIL SERVICE RETIREMENT SYSTEM
May 7, 8:30 a.m., May 21, 11:30 a.m.

COURT PERSONNEL SYSTEM (COURT EMPLOYEES)
May 7, 12:00 p.m.

COURT PERSONNEL SYSTEM (JUDGES)
May 7, 12:30 p.m.

EEOC CHAIRMAN SPEAKS FOR ASIAN AND PACIEIC ISLAND HERITAGE WEEK
May 3, 12:00 p.m.; May 21, 2:30 p.m.

ELECTRONIC RECORDS MANAGEMENT
May 11, 3:30 p.m.; May 18, 8:30 a.m.; May 24, 10:30 a.m.

FEDERAL EMPLOYEES RETIREMENT SYSTEM (FERS)
May 4, 11:30 a.m; May 7, 2:00 p.m.; May 21, 10:00 a.m.

FJTN FROM WHERE YOU SIT
May 6, 12:00 p.m.; May 27, 12:00 p.m.

FJTN NEWS UPDATE
Length: 2-5 mins. *FJTN News Updates* will be aired throughout the FJTN broadcast day, appearing either before or after a program.

FURNITURE AND FURNISHINGS ACQUISITION
May 4, 2:00 p.m. (live); May 17, 9:00 a.m.; May 21, 8:30 a.m.; 1:00 p.m. ; May 24, 9:00 a.m.; May 25, 3:00 p.m.

IN CAMERA: A DISCUSSION WITH JUDICIAL LEADERS
Every Monday at 8:30 a.m.; Every Tuesday at 4:30 p.m.
Designed primarily for: Judges and staff throughout the federal Judiciary.

INEORMATION TECHNOLOGY PROJECT MANAGEMENT: WHY IT'S IMPORTANT TO YOU
May 4, 4:00 p.m.; May 11, 9:30 a.m.; May 24, 12:30 p.m.

INTRODUCTION TO THE INTERNET/INTRANET (J-NET)
May 17, 1:00 p.m.

INTRODUCTION TO THE JUDICIARY BENEFITS INITIATIVE
May 4, 8:30 a.m.; May 25, 1:00 p.m.

INTRODUCTION TO NCIC 2000
May 18, 10:00 a.m.; May 18, 2:00 p.m.

JUDGE JOSE A. CABRANES SPEAKS FOR HISPANIC-AMERICAN HERITAGE WEEK
May 3, 4:30 p.m.; May 10, 11:00 a.m.

JUDICIARY BENEFITS INITIATIVE: TOWERS PERRIN STUDY
May 4, 9:30 a.m.; May 10, 3:00 p.m.; May 11, 10:30 a.m.
May 24, 11:30 a.m.; May 25, 2:00 p.m.

JUDICIARY BENEFITS INITIATIVE: LONG-TERM CARE—WHAT IS IT?
May 4, 10:30 a.m.; May 10, 4:00 p.m.; May 11, 11:30 a.m. ; May 24, 3:00 p.m.; May 25, 8:30 a.m.

JUDICIARY BENEFITS INITIATIVE: LONG-TERM CARE PLAN CONSIDERATIONS
May 11, 1:00 p.m. (live); May 17, 10:30 a.m.; 3:00 p.m.
May 24, 4:00 p.m.; May 25, 9:30 a.m.

JUSTICE RUTH BADER GINSBURG SPEAKS EOR WOMEN'S HERITAGE WEEK
May 10, 11:30 a.m.

LEADERSHIP 2000 CLASS THREE, MODULE 3 MOVING EROM CONFLICT TO COLLABORATION
May 13, 1:00 p.m.
CLASS FOUR, MODULE 3 MOVING FROM CONFLICT TO COLLABORATION
May 14, 1:00 p.m.

MANAGING GENERATION XERS
May 19, 8:00, 10:00 a.m.; 12:00, 2:00, 4:00 p.m.

NEUROBIOLOGY OF ADDICTION
May 20, 8:00, 10:00 a.m.; 12:00, 2:00, 4:00 p.m.

OTHER CRIMES, WRONGS, OR ACTS: APPLYING FEDERAL RULE OF EVIDENCE 404(B) PARTS ONE &TWO
May 26, 12:00, 3:00 p.m.

PERSPECTIVES ON PROBATION AND PRETRIAL SERVICES
May 5, 8:00, 9:00, 10:00, 11:00 a.m.; 12:00, 1:00, 2:00, 3:00, 4:00, 5:00 p.m.

PREVENTING DISCRIMINATION AGAINST PEOPLE WITH DISABILITIES
May 3, 9:00 a.m.; May 7, 10:00 a.m.; May 10, 9:00 a.m.

SECURITY EOR JUDICIARY COMPUTER USERS
May 3, 11:00 a.m.

SEX OFFENDERS: ASSESSMENT FOR SENTENCING SUPERVISION & TREATMENT (NIC/CSOM)
May 28, 9:00 a.m.; 2:00 p.m.

SPACE AND FACILITIES COURTHOUSE PROJECTS PROGRAM A
May 4, 1:00 p.m.
PROGRAM B
May 3, 3:00 p.m.

SPECIAL REPORT: Y2K
May 7, 1:00 p.m.; May 11, 2:30 p.m.; May 17, 4:00 p.m.; May 25, 12:00 p.m.

TECHNOLOGY AND HUMAN RESOURCES: ARE YOU KEYED UP?
May 7, 3:30 p.m.; May 17, 11:30 a.m.; May 18, 12:30 p.m.; May 21, 3:30 p.m.; May 25, 10:30 a.m.

TICKET TO RIDE: TRAVEL REGULATIONS FOR COURT PERSONNEL
May 11, 12:30 p.m.

WORDPERFECT 6.1 TO 8.0 TRANSITION
May 3, 1:00 p.m.

WORDPERFECT 8.0 TEMPLATES
May 10, 1:00 p.m.; May 24, 1:00 p.m.

JUNE

2-3 **Wednesday-Thursday**
Committee on Defender Services

2-4 **Wednesday-Friday**
National Workshop for District Judges I

3-4 **Thursday-Friday**
Committee on the Administration of the Bankruptcy System

6-8 **Sunday-Tuesday**
Committee on Security and Facilities

7-8 **Monday-Tuesday**
Committee on Administration of the Magistrate Judge System

8-9 **Tuesday-Wednesday**
Committee on Criminal Law

8-10 **Tuesday-Thursday**
Committee on Automation and Technology

9-10 **Wednesday-Thursday**
Committee on Judicial Resources

14-15 **Monday-Tuesday**
Committee on Federal/State Jurisdiction

14-15 **Monday-Tuesday**
Committee on Rules of Practice and Procedure

14-16 **Monday-Wednesday**
Committee on Court Administration and Case Management

17-18 **Thursday-Friday**
Committee on the Administrative Office

17-20 **Thursday-Saturday**
Second Circuit Conference

21-22 **Monday-Tuesday**
Advisory Committee on Criminal Rules

23-25 **Wednesday-Friday**
Sixth Circuit Conference

24-26 **Thursday-Saturday**
Fourth Circuit Conference

PLEASE POST

VACANCY ANNOUNCEMENTS

THE THIRD BRANCH

Vol. 31 Number 4 April 1999

CHIEF PRETRIAL SERVICES OFFICER, Eastern District of New York, Brooklyn

The District Court for the Eastern District of New York is accepting applicants for the position of chief pretrial services officer. Salary $82,662 to $111,342 (JSP15-17, commensurate with experience. Minimum educational requirement: college degree from an accredited institution in a field related to the position; advance degree preferred. Individual selected must undergo full field investigation by FBI. Submit letter/resume, including salary history, size of organization's budget, number and composition of personnel, functions managed and dates of employment, together with references to Selection Panel for Chief Pretrial Services Officer, c/o District Executive, U.S. District Court, 225 Cadman Plaza E., Brooklyn, NY 11201. Position start date: January 3, 2000. For a copy of the full vacancy announcement call 718-260-2260. **Application deadline: June 1, 1999.**

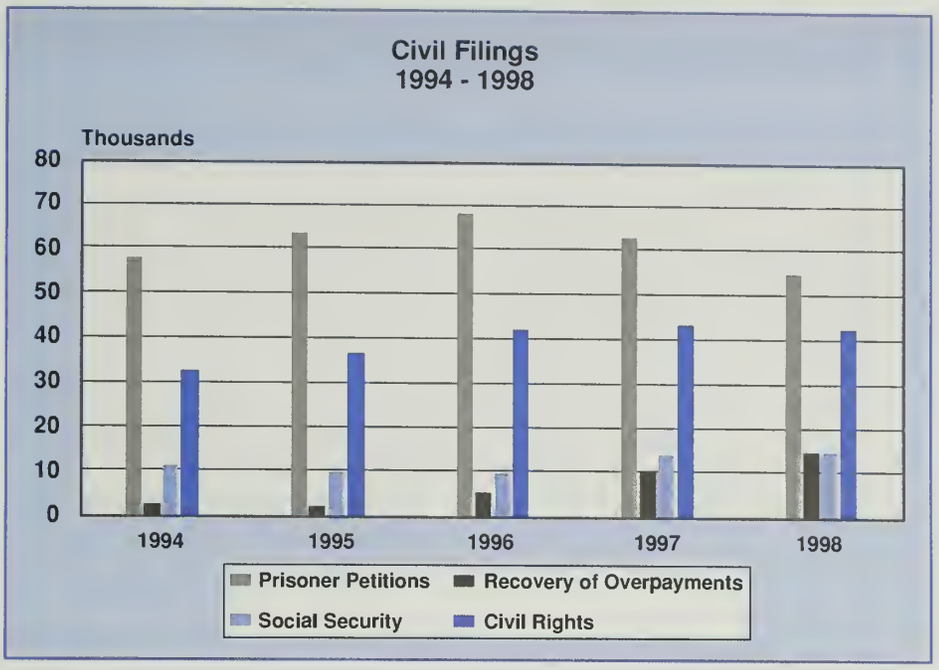
BANKRUPTCY JUDGESHIP, Northern District of Ohio, Canton

The U.S. Court of Appeals for the Sixth Circuit seeks applicants to fill a vacancy on the bankruptcy court for the Northern District of Ohio. Chambers are located at Canton, Ohio. Appointment for a 14-year term. Salary: $125,764. Full public notice with qualification standards is posted in the offices of the clerks of the U.S. Court of Appeals for the Sixth Circuit and the U.S. District and Bankruptcy Courts for the Northern District of Ohio. For further information and application forms, contact the Office of the Sixth Circuit, Circuit Executive, U.S. Court of Appeals for the Sixth Circuit, 503 Potter Stewart U.S. Courthouse, Cincinnati, Ohio, 45202-3988. Telephone: 513-564-7200. **Application deadline: May 28, 1999.**

BANKRUPTCY JUDGESHIP, Middle District of Florida, Tampa

The U.S. Court of Appeals for the Eleventh Circuit seeks applications from highly qualified persons for a bankruptcy judgeship position in the Middle District of Florida at Tampa, Florida, succeeding Chief Judge Alexander L. Paskay. Judge Paskay has indicated his intention to retire upon expiration of his term September 12, 1999. The term of permanent employment is 14 years, and the current salary is $125,764. Application forms may be obtained from any district court or bankruptcy court clerk in the Eleventh Circuit or from the Circuit Executive in Atlanta, Georgia. Further information concerning the position is available through Norman E. Zoller, Circuit Executive, U.S. Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, NW, Atlanta, Georgia 30303. Telephone: 404-335-6535. **Application deadline: May 21, 1999.**

Filings with the U.S. as plaintiff increased 12 percent. This growth occurred primarily because filings related to defaulted student loans jumped 55 percent. Department of Justice officials continue to attribute the rise to efforts by the Department of Education to submit defaulted student loans for collection.

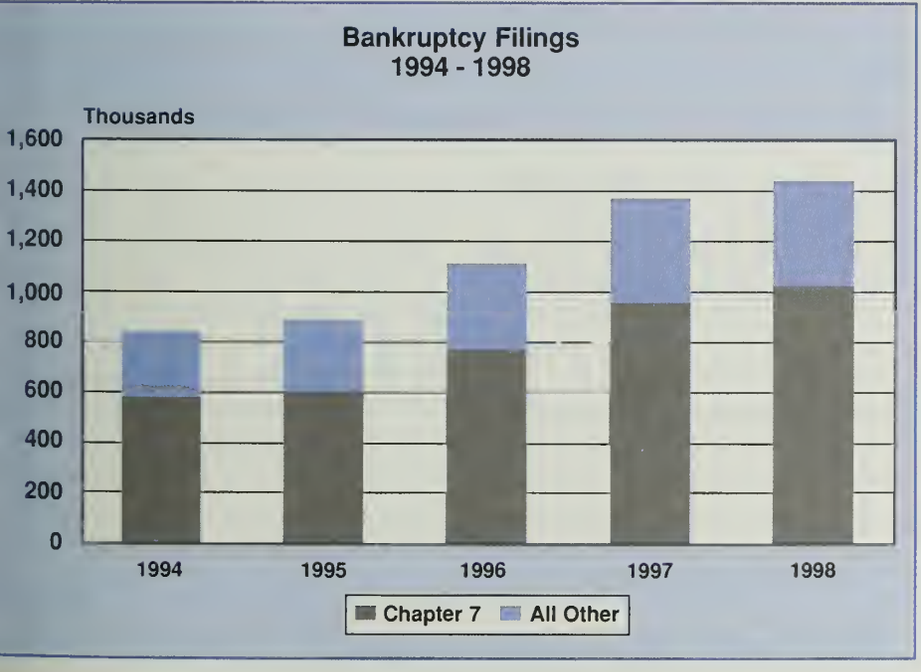


Bankruptcy Filings

Bankruptcy filings in fiscal year 1998 totaled 1,436,964. While FY98 filings increased 5 percent over the same period in FY97, this growth was less than the 23 percent increase in FY97 and the 26 percent increase in FY96. In 1997, 93 of the 94 districts recorded increased filings. In 1998, 76 districts reported higher numbers.

A 6 percent rise in nonbusiness, or consumer, petitions caused this year's growth. Nonbusiness filings have constituted an increasingly larger percentage of overall bankruptcy filings for more than a decade. Business filings, which accounted for 3 percent of all filings this year, dropped 13 percent in 1998 to their lowest level since 1981.

Of the total number of bankruptcy filings for FY98, there were 1,026,134 chapter 7 filings, an increase of 7 percent over the 958,045 filings in the same period in 1997. The next largest group of filings was chapter 13 filings at 401,151, a 1 percent increase over the 397,097 filings in 1997. Chapter 11 filings dropped to 8,765 in FY98, down from 11,221 in the same period in 1997. Chapter 12 filings also fell, going from 966 in 1997, to 879 in 1998.



Probation and Pretrial Services

On September 30, 1998, there were a total of 172,340 persons under supervision of federal probation and pretrial services. The federal probation system supervised 93,737 persons, a 3 percent increase over the number reported for FY 97. This number includes 32,594 persons under probation, 54,819 serving terms of supervised release, and 3,583 under parole. The number of persons serving terms of supervised release following their release from prison rose 7 percent in 1998.

In FY98, the number of defendants in cases activated in the pretrial services system increased 13 percent to 78,603, consistent with the growth in criminal filings in the district courts. Pretrial services officers interviewed 59,074 defendants and prepared 75,760 pretrial reports. Of the defendants released, 31,116 were released with restrictive conditions. The most frequently ordered restrictive conditions involved substance abuse testing and treatment and were imposed on 21 percent of the activated defendants. House arrest and electronic monitoring were ordered for 6 percent of the activated defendants.

JUDICIAL MILESTONES

Appointed: Valerie K. Couch, as U.S. Magistrate Judge for the Western District of Oklahoma, March 8

Appointed: Karen Wells Roby, as U.S. Magistrate Judge for the Eastern District of Louisiana, February 22

Elevated: Judge Hector M. Laffitte, to Chief Judge, U.S. District Court for the District of Puerto Rico, March 16, succeeding Judge Carmen Consuelo Cerezo

Elevated: Judge A. J. McNamara, to Chief Judge, U.S. District Court for the Eastern District of Louisiana, February 27, succeeding Judge Morey L. Sear

Elevated: Bankruptcy Judge Gerardo Carlo-Altieri, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the District of Puerto Rico, March 1, succeeding Bankruptcy Judge Sara E. De Jesus

Retired: Judge Cornelia G. Kennedy, U.S. Court of Appeals for the Sixth Circuit, March 1, 1999

Retired: Magistrate Judge Ronald L. Howland, U.S. District Court for the Western District of Oklahoma, March 27

Retired: Bankruptcy Judge Laurence E. Howard, U.S. Bankruptcy Court for the Western District of Michigan, March 28

Deceased: Senior Judge Clyde Atkins, U.S. District Court for the Southern District of Florida, March 11

Deceased: Senior Judge Shane Devine, U.S. District Court for the District of New Hampshire, February 22

Deceased: Senior Judge Robert E. DeMascio, U.S. District Court for the Eastern District of Michigan, March 23

Deceased: Senior Judge Joseph L. McGlynn, Jr., U.S. District Court for the Eastern District of Pennsylvania, February 23, 1999

Deceased: Judge Linda Hodge McLaughlin, U.S. District Court for the Central District of California, March 7

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of April 1, 1999

Courts of Appeals	
Vacancies	18
Nominees	10
District Courts	
Vacancies	47
Nominees	23
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	28

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Congress Addresses Legislation on Range of Judiciary-Related Issues

Several bills have been introduced in the 106th Congress that, if enacted, could significantly affect the Judiciary in areas from employment to cameras in the courtroom.

Y2K

Bills limiting lawsuits arising from computer program failures in the year 2000 continue to move through Congress. (See *The Third Branch*, March 1999 for more on these bills.) The leading bills generally expand jurisdiction of the federal courts over Y2K class actions. The House Judiciary Committee has scheduled a hearing in mid-April on **H.R. 775**, the Year 2000 Readiness and Responsibility Act. The Senate Judiciary Committee has favorably reported **S. 461**, the Year 2000 Fairness and Responsibility Act, out of committee and the Senate Committee on Commerce, Science and Transportation has reported out **S. 96**, the Y2K Act. Y2K legislation may move to the Senate floor for a vote within the month. The Judicial Conference opposes the provisions expanding federal court jurisdiction over Y2K class actions, as well as those creating specific pleading requirements.

Ninth Circuit Reorganization

S. 253, the Federal Ninth Circuit Reorganization Act of 1999, introduced by Senator Frank H. Murkowski (R-AK), would implement many of the recommendations made by the Commission on Structural Alternatives for the Federal Courts of Appeals. Provisions call for the organization of the Ninth Circuit, within 180 days of the bill's enactment, into three regional divisions. A circuit division would be established to review any final decision rendered in any of the court's divisions. The bill also would allow the judicial council of each circuit to establish a district court appellate panel service composed of district judges of the circuit to hear and determine appeals. Final decisions of the panels would be reviewed by the court of appeals at its discretion. The Judicial Conference opposes the establishment of district court appellate panels.

Cameras in the Courtroom

S. 721, the Sunshine in the Courtroom Act, was introduced by Senator Charles E. Grassley (R-IA) with Senators Charles Schumer (R-NY), Patrick Leahy (D-VT), Russell Feingold (D-WI), and Daniel Moynihan (D-NY).

The bill would allow the photographing, electronic recording, broadcasting and televising of federal court proceedings. S. 721 permits, but does not require, presiding appellate and district court judges to allow cameras in the courtroom. Non-party witnesses would have the right to have their voices and images obscured during their testimony. The bill also would authorize the Judicial Conference to promulgate advisory guidelines for use by presiding judges in determining the management and administration of photographing, recording, broadcasting, or televising the proceedings. The authority for cameras in federal courts would sunset in three years. A companion bill to allow media coverage of court proceedings, **H.R. 1281**, was introduced in the House by Representative Steve Chabot (R-OH) and has 36 co-sponsors from both parties.

Following a three-year pilot program, the Conference declined to expand camera coverage in civil proceedings due to the potential adverse impact on witnesses and jurors. By federal rule, cameras are not allowed in criminal proceedings. The Conference left to the courts of appeals the decision whether to permit camera coverage of appellate arguments. Only two circuits, the 2nd and 9th, subsequently voted to allow such coverage.

Employment

Representative Jesse L. Jackson, Jr. (D-IL) has introduced **H.R. 1048**, the Judicial Branch Employment Nondiscrimination Act, which would amend Title VII of the Civil Rights Act of 1964 to include the federal Judiciary. The bill would allow individuals to file appeals with the EEOC or to file suit in federal court for alleged acts of discrimination. With 41 cosponsors, the bill has been referred to the House Judiciary Subcommittee on the Constitution, but no hearings have been scheduled. Presently, the courts of appeals and the district courts have, or are in the process of implementing, an Employment Dispute Resolution Plan, through which complaints of discrimination are resolved in an administrative process similar to what Congress offers to its own employees.

Firearms Prosecution Projects

The Senate approved an amendment to its version of H. Con. Res. 68, the Congressional Budget for the U.S. Government, expressing the "sense of the Senate" that $50 million will be provided in fiscal year 2000 to conduct intensive firearms prosecution projects in the 25 American cities with the highest crime rates. Under such projects, local, state, and federal law enforcement officials cooperate to prosecute in federal court virtually all crimes committed with firearms. As Congress takes steps to expand this project nationwide, one such project in Richmond has inundated the Eastern District of Virginia with gun prosecutions.

A recent federal court decision there said the project "represents a substantial federal incursion into a sovereign state's area of authority..."

Committee's Mission is Quality of Justice

An Interview with Chief Judge D. Brock Hornby (D. Me.), chair of the Judicial Conference Committee on Court Administration and Case Management.

Q: You chair the Judicial Conference Committee on Court Administration and Case Management. What are the responsibilities of the committee?

A: The Court Administration and Case Management Committee, as its name implies, has a fairly broad area of jurisdiction. In addition to making policy recommendations on case management issues for the appellate and district courts and governance issues for all court offices, the committee also addresses diverse issues such as fees, juries, court reporters and interpreters, and attorney admissions. I think this broad jurisdiction is beneficial for the committee. There is no single area or constituency that the committee focuses on or feels the need to protect. As one of my colleagues on the Budget Committee has said, we are the "quality of justice" committee. We are asked to take a broad perspective and assess how a programmatic or budget proposal may impact the primary mission of the courts to provide justice to all. Appropriately, our committee has representation from each circuit and also includes a magistrate judge and a bankruptcy judge. A district court clerk is invited to attend our meetings.

Q: Given this broad jurisdiction, what is your relationship to the other Judicial Conference committees?

A: The committee often works with other committees to suggest and implement policy. One illustration of our role in taking a Judiciary-wide perspective on issues was our work with the Space and Facilities Committee in providing a case management perspective to the development of Conference policies relating to courtroom usage and non-resident facilities.

Most recently, the committee worked closely with the Judicial Resources Committee on the question of funding the death penalty law clerk program on a national basis. Death penalty law clerks serve both as a substantive resource to the judges in death penalty habeas corpus matters, and as case management monitors. The Court Administration and Case Management Committee believed that the program provided much-needed assistance to the judges in the management of these difficult cases, but more importantly that this program increases the quality of justice the courts provide. The Judicial Resources Committee then considered our committee's analysis of the death penalty law clerk program in its deliberation of whether resources should be allocated to the program. We have also worked with the Committee on Automation and Technology on the use of video conferencing in prisoner civil rights cases.

Q: Recently, Alternate Dispute Resolution legislation was enacted. What role has the committee played in the development of ADR?

A: The federal courts have had ADR for 20 years, and our committee has been very involved in its development. In fact, the chair of the Committee on Court Administration and Case Management has testified on behalf of the Judicial Conference before the House Judiciary Committee several times regarding ADR legislation. Our committee and the Conference have encouraged courts to use their discretion in developing the ADR program they think is appropriate to meet their specific needs. For example, the recently enacted ADR Act originally would have required each district court to establish a court-annexed arbitration program. Our committee worked very closely with Congress, the Department of Justice, the ABA, and other organizations to provide more flexibility in the Act so that district courts could have the ADR program that best suits their needs.

Chief Judge D. Brock Hornby

Q: What programs have continued since the sunset of the Civil Justice Reform Act?

A: With the sunset of the Civil Justice Reform Act, some of its provisions survived, either because they were required by the statute or because they were good programs that our committee recommended be continued.

The RAND study, which was commissioned under the act, found that the CJRA public reporting requirements seemed to have a bene-

ficial effect on reducing the number of three-year-old cases, and the committee recommended the public reporting requirements on motions and bench trials pending over six months and cases over three years be continued. Congress also decided to make the reporting requirement permanent.

In addition, our committee determined that the CJRA software developed by the AO to deal with public reporting was mature enough for all courts to begin using it and recommended to the Conference that all courts use it for the September 30, 1998, report. A number of courts had to do some work in terms of cleaning up their dockets, but it has been a very successful exercise, giving the courts a better sense of the state of their docket and more uniformity in what is being reported. Another promising development is WEB CHASER, which will enable all judges to see the status of the docket and what the report will look like for the next reporting period. The Judicial Conference, on the committee's recommendation, also has added two more categories of items that will be reported, bankruptcy appeals and social security appeals.

Our committee also recommended that the CJRA advisory groups continue after the sunset of the CJRA. They are made up of representatives of the court and the bar, and even the public. We recommended that they continue to be used and suggested topics for them to consider such as jury service and how that can be made more efficient, the use and implementation of electronic technologies such as electronic filing and video evidence presentations, as well as continuing to comment on the state of the criminal and civil dockets.

Q: With the growing caseloads and the continuing problem of judicial vacancies, what is your committee doing to assist the courts?

A: The committee has been considering various case management tools that a chief judge might implement to manage the assignment of protracted and complex cases. In March, the Conference adopted the committee's recommendations to suggest case management tools that could be used voluntarily by the courts to help with the management of difficult cases. The first is to establish separate wheels on their case assignment systems for difficult and complex cases, so that they will be distributed equally among judges on the courts. The second recommendation is that the courts consider developing procedures by which judges could voluntarily return cases to the case assignment wheel.

We're also working on a litigation manual that pulls together all the lessons we've learned from the CJRA plans adopted by the courts and from the RAND and Federal Judicial Center studies. At the appellate level, we sponsored a case management information exchange last November in Chicago, and according to the reaction from the chief judges and other appellate judges who were there, it was a very helpful exercise. The judges who participated heard a lot of ideas about ways other circuits are doing things. We hope that it was a valuable tool for the circuits to use in reviewing and assessing their case management procedures.

Q: In addition to case management, your committee has jurisdiction over court administration matters. What issues has your committee confronted in this area?

A: Following a study conducted by the National Academy of Public Administration on the administrative structures of the federal trial courts, some districts expressed interest in combining or sharing administrative functions among different court units. Indeed one district reorganized to combine the administrative and operational functions of the district and bankruptcy clerk's offices. Our committee, along with the Bankruptcy Committee, developed procedures for the courts to follow in analyzing whether consolidation is appropriate and in obtaining approval for a consolidation in accordance with the statutory structure.

Another court administration issue came to the committee's attention through new chief district judges who suddenly discovered the enormous responsibility they had with regard to budgetary matters—and also realized how much they had to learn—and fast! With budget decentralization, most of the work done previously at the Administrative Office is now done at the court level. It is very important that the chief judge and indeed all the judges on the court have an understanding of budget decentralization and the budget-making process in their courts. Although significant training was done at the time budget decentralization was instituted, new chief judges have come on who have not had the training. Our committee worked with the Budget Committee and the Administrative Office and Federal Judicial Center to institute budget training in workshops provided by the FJC. We also have been working with them on administrative budget models that courts might follow in establishing budget processes in their courts.

Q: What issues do you see your committee facing in the future?

A: The committee is going to be dealing with policies related to the new electronic case files and issues of privacy. Obviously, we will also be involved in the long-range budgeting and planning initiatives.

Judicial Conference of the United States, March 16, 1999

Seated: *(L to R) Chief Judge Juan R. Torruella (1st Cir.); Chief Judge Ralph K. Winter, Jr., (2nd Cir.); Chief Judge Edward R. Becker (3rd Cir.); Chief Judge J. Harvie Wilkinson III (4th Cir.); Chief Justice William H. Rehnquist; Chief Judge Carolyn Dineen King (5th Cir.); Chief Judge Boyce F. Martin, Jr. (6th Cir.); Chief Judge Richard A. Posner (7th Cir.); Chief Judge Pasco M. Bowman II (8th Cir.)*

Standing, Second Row: *(L to R) Judge Joseph A. DiClerico, Jr. (D. N. H.); Chief Judge Charles P. Sifton (E. D. N.Y.); Chief Judge Donald E. Ziegler (W. D. Pa.); Chief Judge Harry T. Edwards (D. C. Cir.); Chief Judge Haldane Robert Mayer (Fed. Cir); Chief Judge Joseph W. Hatchett (11th Cir.); Chief Judge Procter R. Hug, Jr. (9th Cir.); Chief Judge Stephanie K. Seymour (10th Cir.); Chief Judge Charles H. Haden II (S. D. W.V.); Judge Hayden W. Head, Jr. (S. D. Tex.)*

Standing, Third Row: *(L to R) Judge Robert L. Miller, Jr. (N. D. Ind); Judge Thomas A. Wiseman, Jr. (M. D. Tenn.); Judge Lloyd D. George (D. Nev.); Judge Ralph G. Thompson (W. D. Okla.); Judge James M. Rosenbaum (D. Minn.); Judge Wm. Terrell Hodges (M. D. Fla.); Chief Judge Norma H. Johnson (D. D.C.); Chief Judge Gregory W. Carman (Int'l Trade); Leonidas Ralph Mecham (AO Director)*

THE THIRD BRANCH

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AO Celebrates 60 Years of Service

Chief Justice William H. Rehnquist (at the podium) celebrated the accomplishments of the Administrative Office over the last 60 years at an anniversary celebration in Washington last month. Chief Judge Edward B. Davis (S. D. Fla.) and AO Director Leonidas Ralph Mecham (photo left to right) also addressed AO employees assembled to observe the milestone event.

"You are very important to the roper functioning and independence the Judiciary, and judges and dicial employees across the country ppreciate your work." Those were e words of Chief Justice William H. ehnquist to the assembled staff of the dministrative Office of the U.S. ourts, as the agency marked its 60th nniversary at a special ceremony last onth.

The Chief Justice went on to com- end the AO's efforts, especially un- er Director Leonidas Ralph lecham's leadership, in helping to sustain the independence of the Judiciary. He cited as examples of that effort some of the important accomplishments of the AO over the past six decades, such as working with the Judicial Conference and other government agencies to coordinate and implement new legislation and procedures; supporting over 2,000 judicial officers; guiding and supporting thousands of probation and pretrial services officers; providing centralized core administrative functions, such as payroll and ac-

See ***60 Years*** *on page 2*

June 15th Funding Cutoff Averted

The good news/bad news scenario on the Judiciary's 1999 funding finally resolved itself in May with the President's signature on P.L. 106-31, legislation making emergency supplemental appropriations for the fiscal year ending September 30, 1999. The public law includes a provision to remove the limitation on funding after June 15th.

Last year, the good news was that Congress gave the Judiciary a 6 percent increase in obligations in the fiscal year 1999 omnibus appropriations bill. The bad news was that the funding ran out June 15th for all agencies in the Commerce, Justice, State, the Judiciary and Related Agencies portion of the bill. It came down to a political controversy over census sampling in which the Judiciary became an unexpected hostage.

"The Judiciary is extremely pleased that Congress has passed and the President has signed legislation that, among other provisions, will release the Judiciary from the June 15, 1999, cutoff provision included in our 1999 appropriations act, " Administrative Office Director

See ***Funding*** *on page 3*

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counting services; developing and supporting automated systems and technologies; and developing and executing the budget.

In the years prior to 1939, the Department of Justice had primary responsibility for the administration of the courts. The role placed the executive and judicial branches in a very awkward and potentially compromising position. The inception of the AO, 60 years ago, was to insure complete independence from the executive branch. "Since its creation, the Administrative Office has fulfilled one of its primary purposes in helping to sustain the independence of the Judiciary," Rehnquist said. "But the work is far from over. The Administrative Office plays no less significant a role today in maintaining the courts' independence by providing crucial support on issues including judges' salaries, judges' travel, funding for courtroom construction, insurance coverage for judges, and appropriations for the Judiciary," said Rehnquist. "Indeed, even today we face a continuing struggle with OMB's attempts to reduce the Judiciary's budget before it has been submitted to Congress. Each of these issues is important to an independent Judiciary."

Mecham congratulated the agency's employees on their long history of successes, and for their spirit of service, invention, and resourcefulness. "You've shown your best work when pressed for time, strapped for funding, and short on staff," said Mecham.

Chief Judge Edward B. Davis (S. D. Fla.), chair of the Judicial Conference Committee on the Administrative Office, also addressed AO employees celebrating the milestone. "It is hard to imagine the Judiciary without the AO's assistance," Davis said. "Make no mistake, you play a part in what happens every day in federal courts across the country.

Left: Judge Davis presents Director Mecham with a framed copy of the AO Committee's resolution recognizing the AO's 60th anniversary.

Above: President Franklin Delano Roosevelt signs the 1939 Act creating the Administrative Office of the United States Courts. He is flanked by former Attorney General Homer S. Cummings and then Attorney General Frank Murphy.

Whether you talk to congressional staff, plan new courthouses, prepare contracts, run computer systems, collect and analyze statistics, produce the budget, staff the Conference committees, develop programs and procedures, or answer questions from the courts or the public—remember all of the work done by the AO on behalf of the Judiciary makes justice possible."

The full text of remarks are available on the Judiciary's Internet site at www.uscourts.gov.

By unanimous resolution the Judicial Conference Committee on the Administrative Office recognized the 60th anniversary of the creation of the Administrative Office of the United States Courts, as follows:

"In recognition of six decades of distinguished service to the Federal Judiciary, the Committee on the Administrative Office commends the Administrative Office of the United States Courts, its six Directors, Henry P. Chandler (1939-1956), Warren Olney III (1958-1967), Ernest C. Friesen (1968-1970), Rowland F. Kirks (1970-1977), William E. Foley (1977-1985), and Leonidas Ralph Mecham (1985-present); and their dedicated employees, for furthering the discipline of judicial administration; for adhering to the highest standards of excellence in all endeavors; and for exemplary service to the Judicial Conference of the United States, federal judges, and the entire judicial family.

During its 10-year history, this Committee has been particularly pleased with the initiatives of Director Leonidas Ralph Mecham, who has set high standards of equity and fairness in administrating the Third Branch and has delegated numerous administrative authorities to court units throughout the United States so that decisions about the use of available resources are made by those who are most affected by those decisions. Director Mecham's leadership and proficiency—in budget and legislative matters, in expanding the federal courthouse construction program, in enhancing security for judicial officers and courthouses, and in implementing information technologies to support court operations and improve public access to court information—have made a lasting contribution to the judicial branch.

Whereas the Committee wishes to endorse the practices of the present Director that have empowered court units throughout the United States and promoted efficient operation of the Judiciary, the Committee congratulates Director Mecham and his staff and finds their work exemplary and in the best interests of a fair, efficient, and responsive judicial branch."

A History Beginning with Service

Several judges, as chairs of the Judicial Conference Committee on the Administrative Office, occupied a unique vantage point from which to view the development of the AO. In his article "Judiciary Reform: Recent Improvements in Federal Judicial Administration,"* Judge Harlington Wood, Jr. (7th Cir.), the first chair of the AO Committee (1987 to 1991), looked back on the creation of the AO as an important step toward an integrated system that fully recognized the independence of the federal Judiciary. In fact, Wood refers to the AO's creation, along with that of the Judicial Conference and the circuit judicial councils, as having a revolutionary impact on federal judicial administration, that moved the courts away from "complete autonomy and toward more consistent practices." Although Wood credits the AO subsequent to 1939 with providing the courts with classic administrative services, he dates the implementation of reforms that greatly improved the overall administration of the courts from the beginning of Leonidas Ralph Mecham's tenure as Director. "Director Mecham shifted from centralized to decentralized control because he believed that judges and administrators in the individual courts were better situated to make decisions about how to use resources most efficiently and effectively than a centralized staff. . . ," Wood wrote.

Judge Thomas Penfield Jackson (D.D.C.), chair of the AO Committee from 1991 to 1994, relates that decentralization was perceived very favorably. "We were duly impressed with the rapidity with which the AO adapted to technology and the enthusiastic responsiveness to the desires of the courts for local autonomy," he relates. He was particularly complimentary of AO personnel, calling AO staff "probably the best" he had encountered in government, "very able, very conscientious, and very smart."

Mecham also implemented the innovative AO planning and management objectives system, that according to Wood helped to focus the agency's limited resources on its most important tasks. Wood identified as key to the Judiciary's continued reform Mecham's initiation of a coordinated cost-containment effort, both in the courts and at the AO, to identify opportunities for using limited resources more effectively.

As retired Judge Ted Milburn, chair of the Committee from 1994 to 1996, said, "Having witnessed firsthand its operations since Director Mecham's appointment, I can state unequivocally, that in my view, the Administrative Office is the best organized and most efficiently operated organization that I have ever encountered."

The overall reforms prompted the late Judge John F. Gerry (D. N.J.), then chair of the Judicial Conference Executive Committee, to tell the Conference at its September 1994 session "[t]he past nine years have been the golden age of judicial administration at the national level under Director Ralph Mecham and Chief Justice Rehnquist."

* "L. Ralph Mecham & Federal Courts Administration: A Decade of Innovation and Progress." The American University Law Review, Vol. 44, Number 5, June 1995.

unding continued from page 1

Leonidas Ralph Mecham said shortly fter the bill was signed May 1. "As Chief Justice William Rehnquist pointed out in his letter ent March 17 to congressional eaders, freezing funds to the courts vould deny to the public the services nd protections they expect and to vhich they are entitled. We are articularly grateful for the support rom the Judiciary's friends in Congress, to the Chief Justice, and to he numerous federal judges who urged that the appropriations be released."

When the FY99 appropriations bill was passed last year, Representative Harold Rogers (R-KY) called the limitation "a serious mistake." In the Judiciary's fiscal year 2000 budget hearings in early March 1999 before Rogers' House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary and Related Agencies, he referred to the June 15th cutoff as "the next potential calamity." Rogers and the subcommittee's ranking minority member, Jose Serrano (D-NY), indicated then to Judge John Heyburn (D. Ky) and other Judicial Conference representatives that they would attempt to free the Judiciary from the funding exclusion. Mecham told the subcommittee that the Judiciary should not be pulled into the political fight over the census. However, when by mid-March the Judiciary was still threatened by a cutoff, Chief Justice Rehnquist weighed in, writing to congressional leadership to urge them to release the Judiciary from the cutoff date.

Hearings Support Presidential Salary Increase

The House held hearings on the salary of the President of the United States last month, and heard that 30 years is a long time to go without a pay raise. Representative Stephen Horn (R-CA), chair of the House Committee on Government Reform and Oversight, Subcommittee on Government Management, Information and Technology invited a particularly notable line-up of bipartisan witnesses to testify on presidential pay, including former White House chiefs of staff Alexander Haig, Kenneth M. Duberstein, Samuel K. Skinner, John H. Sununu, and Thomas R. "Mack" McLarty.

"I can tell you as a former chief executive, or chief operating officer of one of our Fortune 500 multinational companies," said Haig, "that government pay is very, very poor no matter what the office." Haig recommended that the salary of the President be $500,000, with a periodic salary review "to be sure that the dynamics of our economy are keeping pace with his just fundamental requirements."

McLarty observed that, "It is an honor to serve one's country and we do not and should not expect any of us to profit or become rich from government service." But, he added, "I think it's fair to say that opportunity costs are high and they are increasing. And I am worried that we are attracting fewer citizens who have proven successful careers in private life to serve our country." McLarty also expressed his concern about the fixed presidential salary compressing the wages for others who serve in the public sector. "Common sense," McLarty said, "tells us that presidential salaries should not be fixed for 30 years. Fairness suggests that we end the pay compression for other public servants and the economic reality is that government competes with the private sector for talent and experience and we should recognize that."

In March 1999, the Judicial Conference, in agreeing to seek an annual pay adjustment for government leaders, also called for an easing of the pay compression for officials in all three branches of government by supporting an increase in the President's salary. The problem of salary compression means that some senior government officials are paid nearly as much and in some cases more than judges. Under the Constitution any increase in the President's pay would not take effect until the next administration in 2001. If the President's salary is not adjusted before January 20, 2001, it will remain fixed at least until the next presidential oath of office in January 2005.

Skinner told the House subcommittee that although a pay raise mechanism is in place, it is not used because it is tied to congressional salaries. Pay compression results. "This compression problem has also created a very major problem," said Skinner, "where we're attracting candidates but we're not attracting really qualified candidates . . . . All these other people should not be tied to [congressional] salaries. . . ."

Subcommittee member Paul E. Kanjorski (D-PA) expressed similar concerns. "On the judiciary level, I've been a little annoyed with the idea of my good friends in the legal profession who entertain 7-figure salaries on a regular basis, and they're very difficult to persuade to sit on the bench, whether it be a district court or appeals court, or Supreme Court for that matter," said Kanjorski. "And it seems now almost the only people who will decide to sit on the Supreme Court already have amassed sufficient money that they are relatively independent with several million dollars in net assets. And that's unfortunate because some people won't have that opportunity, and therefore have to make terrible choices."

House Says No To New Courthouse Funding

New courthouse construction wasn't funded in this year's House appropriations bill, but six repair and alteration courthouse projects may go forward. Money for these R & A projects was included in the President's budget, although for the third year in a row, the White House refused to include money in the budget for new courthouses needed by the Judiciary. The House Appropriations Subcommittee on Treasury, Postal Service and General Government included money for the six repair and alteration projects when it marked up its fiscal year 2000 appropriations bill last month.

Subcommittee leaders failed to include courthouse money, indicating there was insufficient money to fund them. They did say if additional monies became available during the appropriations process they would reconsider their position. The subcommittee included language in its mark-up of the FY 2000 appropriations bill to allow the General Services Administration (GSA) to retain courthouse money appropriated in FY97. It is likely the full House Appropriations committee will mark up the bill in June. However, if the bill is not signed into law in FY99, the money will lapse.

The House Transportation and Infrastructure Committee already has authorized the new courthouse projects. But without funds, 17 courthouse projects—some of which are ready to begin the construction phase—are left in limbo. "All of the projects have been delayed at least a year," said Judge Norman H. Stahl (1st Cir.), chair of the Judicial Conference Committee on Security and Facilities. "Further delay

means we risk losing intended sites in a very competitive real estate market, and inevitably we will see higher acquisition and construction costs as time elapses. Most unfortunately, courts with critical space and security needs will not have these problems resolved in a timely manner."

Federal courthouses in the following cities may receive funding in FY 2000 for needed repair and alteration projects:

Phoenix, Arizona	Las Vegas, Nevada
Anchorage, Alaska	Albuquerque, New Mexico
Montgomery, Alabama	Dallas, Texas

All of the courthouse projects were developed under guidelines endorsed by Congress in previous years. At Congress' request, the Judiciary prioritized its courthouse construction projects in terms of greatest need. The Judiciary also has worked with the GSA to revise the *U.S. Courts Design Guide* and to stretch construction dollars. Despite this, the White House ignored Judiciary representatives' requests for funding in the FY2000 budget, a request that was supported by the GSA.

In February, Administrative Office Director Leonidas Ralph Mecham wrote to leaders of the Senate and House budget, appropriations, and authorizing committees to urge courthouse funding. In February and March, Stahl and committee member Judge Jane Roth (3rd Cir.) met with congressional committee leaders to discuss the much needed funding. In March, Roth also testified in support of courthouse construction before the House Appropriations Subcommittee on Treasury, Postal Service and General Government.

Meanwhile, judges and AO staff continue to keep members of Congress with courthouse projects in their states or districts aware of the delays—and of delay ramifications. As a consequence, 14 senators and representatives wrote leaders of the Committee on Transportation and Infrastructure to seek their assistance in getting authorization for the FY2000 courthouse projects. Individual members of Congress also contacted members of the House and Senate appropriations committees and Senate authorizing committees in support of the courthouse program.

Arnold Receives Devitt Award

Judge Richard S. Arnold (8th Cir.) is the recipient of the 17th annual Edward J. Devitt Distinguished Service to Justice Award. The award annually honors an Article III judge who has achieved an exemplary career and has made significant contributions to the administration of justice, the advancement of the rule of law, and the improvement of society as a whole.

In a distinguished career as a jurist, Arnold has earned the universal esteem of both his colleagues on the federal bench and fellow members of the bar. Present and former members of the Judicial Conference Executive Committee described him in a joint letter as "a pillar of strength and a vital member of the committee, providing leadership and continuity. . . . He does not wear his intellectual brilliance on his sleeve, and he has always been modest and unassuming in carrying out his vital roles as a leader of the Judiciary."

Arnold graduated first in his class from Harvard Law School, then practiced law in Washington, D.C., and at his family's firm in Texarkana, Arkansas. In 1978 he was appointed to the U.S. District Court for the Eastern and Western Districts of Arkansas. He was elevated to the Eighth Circuit Court of Appeals in 1980 and served as that court's chief judge from 1992 to 1998. A member of the Judicial Conference and the Conference Executive Committee, Arnold also chaired the Conference Budget Committee for 10 years.

The Devitt Award, named for the late Edward J. Devitt (D. Minn.), is administered by the American Judicature Society. This year's award selection committee consisted of Associate Supreme Court Justice Clarence Thomas, Judge Phyllis A. Kravitch (11th Cir.), and Judge D. Brook Bartlett (W.D. Mo.).

Judge Richard S. Arnold

Chief Justice Addresses Public Trust and Confidence

Citing recent surveys that give the Judiciary high marks from the American public, Chief Justice William H. Rehnquist cautioned members of state, local, and federal judiciaries not to rest on their laurels. "The surveys also reveal areas in need of improvement, and a variation of level of confidence for specific components of the system," Rehnquist said.

He addressed his remarks to participants at the National Conference on Public Trust and Confidence in the Justice System, held last month in Washington, D.C. A coalition of national bench and bar organizations organized the conference, including the League of Women Voters, the Conference of State Chief Justices, the American Bar Association and the Conference of Court Administrators. Judge Walter Stapleton (3rd Cir.), chair of the Judicial Conference Committee on Federal-State Jurisdiction headed a group of 10 federal judges as delegates to the Conference, along with representatives from the Administrative Office and the Federal Judicial Center.

In his remarks to the Conference, Rehnquist asked how public confidence in the judicial system can be maintained and built, especially when losing litigants, lawyers, laymen, editorial commentators and legal journals criticize particular court decisions. "One would hope that the criticism would be informed and rational," said Rehnquist, "but as Justice David Brewer of our Court said more than a century ago: 'True, many criticisms may be, like their authors, devoid of good taste, but better all sorts of criticism than no criticism at all.'"

Rehnquist went on to reject recall of judicial decisions based on public opinion. "Recall of judicial decisions by some sort of a popular mandate . . . is too high a price to pay for public approval. This does not mean that public criticism of judicial decisions does not serve a useful purpose," said Rehnquist. "Appellate judges who rendered a decision may later change their minds in response to criticism. And as judges of appellate courts resign, retire, or die, public opinion through the appointing process . . . may change the judicial philosophy of the court. This is a slow process, but it is the only one consistent with the idea of an independent judiciary. Whatever may be the merits or demerits of a poll-driven executive or legislature, the specter of a poll-driven judiciary is not an appealing one."

Greater public trust and confidence, consistent with the idea of judicial independence, can be pursued, said Rehnquist with "improved juror utilization, arrangements by which jurors play a more active part in the deliberations of a court, and giving plain reasons for reaching a result."

In closing, the Chief Justice expressed his confidence that the conference speakers and panels would offer more in the way of useful information and suggestions. "People today are far better educated and far more aware of their rights than they were when this nation began more than two centuries ago," said Rehnquist. "Yet the first Chief Justice of the Supreme Court of the United States, John Jay, said at that time: 'Next to doing right, the great object in the administration of justice should be to give public satisfaction. Surely this remains a sound maxim to guide a conference such as this two centuries later."

The full text of the Chief Justice's remarks to the National Conference on Public Trust and Confidence in the Justice System is available on the Judiciary's Internet site at www.uscourts.gov.

Senate Begins to Focus on Judgeship Needs

S. 1145 would create 69 permanent and temporary judgeships.

Congress "ignores the needs of the Federal judiciary at the peril of the American people," Senator Patrick Leahy (D-VT) warned as he introduced S. 1145, the Federal Judgeship Act of 1999, to create 69 permanent and temporary judgeships. Not since 1990 has Congress created new judgeships, "endangering," said Leahy, "the administration of justice in our nation's federal courts." In that time, total civil case filings have increased 22 percent in federal courts. The number of criminal cases filed increased 25 percent, with the number of criminal defendants rising 21 percent. Appeals filings have climbed by more than 30 percent. "Overworked judges and heavy caseloads slow down the judicial process and delay justice," said Leahy.

S. 1145 reflects the recommendations of the Judicial Conference, which agreed at its spring meeting to transmit to Congress a request for an additional seven permanent and four temporary judgeships in the courts of appeals and 33 permanent and 25 temporary district judgeships. The 69 judgeships requested is up from the 53 judge-

FOR THE FEDERAL JUDICIAL TELEVISION NETWORK

All times are Eastern Daylight Time

Basic Browser Usage
July 13, 1:00 p.m. (live); July 20, 10:00 a.m.

Basic WoroPerfect
July 12, 10:00 a.m. (live); July 19, 2:00 p.m.

Civil Service Retirement System
July 6, 2:30 p.m.; July 27, 10:00 a.m.; July 30, 8:30 a.m.

Court to Court (June 1999)
July 9, 1:00, 2:00, 3:00, 4:00 p.m.

Court Personnel System (court employees)
July 13, 9:30 a.m.; July 27, 4:00 p.m.

Court Personnel System (judges)
July 13, 10:00 a.m.; July 20, 4:00 p.m.

Courtroom Technologies
July 6, 4:00 p.m.; July 12, 12:00 p.m.; July 13, 4:00 p.m.; July 20, 9:30 a.m.; July 26, 10:30 a.m.; July 27, 8:30 a.m.; July 30, 4:30 p.m.

Electronic Records Management
July 2, 2:00 p.m.; July 13, 8:30 a.m.

Feoeral Employees Retirement System (FERS)
July 16, 3:30 p.m.; July 26, 9:00 a.m.; July 30, 11:00 a.m.

FJTN From Where You Sit
July 1, 1:00 p.m.; July 29, 12:00 p.m.

Furniture ano Furnishings Acquisition
July 6, 12:00 p.m.; July 12, 3:30 p.m.; July 30, 12:30 p.m.

Introduction to the Internet/Intranet (J-Net)
July 2, 3:00 p.m.

Introouction to NCIC 2000
July 6, 9:30 a.m.; July 15, 9:30 a.m.; July 19, 9:00 a.m.

Juoiciary Benefits Initiative Conoucts an Employee Benefits Survey (formerly *Judiciary Benefits Initiative: Towers Perrin Study*)
July 6, 8:30 a.m.; July 22, 2:00 p.m.

Juoiciary Benefits Initiative: Integration of Long-Term Care, Meoicare, and FEHB
July 20, 1:00 p.m. (live); July 26, 4:00 p.m.; July 27, 9:00 a.m.

Judiciary Benefits Initiative: Long-Term Care—More Details
July 2, 1:00 p.m.; July 12, 9:00 a.m.

Juoiciary Benefits Initiative: Long-Term Care—Plan Consioerations
July 2, 12:00 p.m.

Juoiciary Benefits Initiative: Long-Term Care—What Is It?
July 2, 11:00 a.m.; July 20, 8:30 a.m.

Neurobiology of Adoiction
July 1, 8:30, 11:00 a.m.; 3:00 p.m.

Perspectives on Probation and Pretrial Services (April 1999)
July 9, 8:30, 10:00, 11:30 a.m.

Pharmacology of Drugs of Abuse
July 8, 8:30, 11:00 a.m.; 1:00, 3:00 p.m.

Pretrial Services Investigations ano Reports Training
July 27, 1:30 p.m.; July 2, 8:30 a.m.; July 19, 11:30 a.m.; July 30, 2:00 p.m.

Preventing Discrimination Against People with Disabilities
July 16, 1:00 p.m. (live); July 27, 11:30 a.m.

Restitution: Determining Victims and Harm
July 29, 2:00 p.m.

Security for Juoiciary Computer Users
July 19, 4:00 p.m.

Sex Offenoers: Assessment for Sentencing Supervision & Treatment (NIC/CSOM)
July 7, 9:00 a.m., 2:00 p.m.

Special Report: Y2K
July 6, 1:30 p.m.; July 30, 10:00 a.m.

Supreme Court 1998-99: The Term in Review (Parts One, Two, and Three)
July 14, 12:00, 3:00 p.m.; July 15, 8:30 a.m., 12:00, 3:00 p.m.; July 21, 8:30 a.m., 12:00, 3:00, 6:00 p.m.; July 23, 8:30 a.m., 12:00, 3:00, 6:00 p.m.; July 29, 9:00 a.m.

Ticket to Ride: Travel Regulations for Court Personnel
July 16, 9:30 a.m.

WoroPerfect Document Formatting
July 12, 2:30 p.m. (live); July 20, 3:00 p.m.

WordPerfect File Management
July 16, 10:00 a.m. (live); July 26, 11:00 a.m.

WoroPerfect QuickFamily
July 12, 1:00 p.m. (live); July 20, 2:00 p.m.

WordPerfect Templates
Advance registration required; Push-To-Talk will be used (July 13 only)
July 13, 10:30 a.m. (live); July 26, 2:00 p.m.

THE THIRD BRANCH

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JULY

5-9 **Monday-Friday**
Eighth Circuit Conference

8-10 **Thursday-Saturday**
Committee on Codes of Conduct

15-16 **Thursday-Friday**
Committee on the Budget

21-23 **Wednesday-Friday**
National Workshop for Magistrate Judges I

25-28 **Sunday-Wednesday**
Ninth Circuit Conference

AUGUST

1-3 **Sunday-Tuesday**
Committee on Financial Disclosure

2-4 **Monday-Wednesday**
Phase I Orientation for Magistrate Judges

14-16 **Wednesday-Friday**
Workshop for Court of Appeals Judges

9-11 **Monday-Wednesday**
National Workshop for District Judges II

12-13 **Thursday-Friday**
Executive Committee

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 31 Number 6 June 1999

CHIEF PROBATION OFFICER, District Of New Jersey. The District Court for the District of New Jersey seeks applicants for the position of Chief Probation Officer. The Probation Office is headquartered at Newark with offices in Trenton, Camden, Paterson and Northfield, New Jersey. The Chief Probation Officer manages a staff of 140 including three deputy chiefs, 13 supervising officers, 23 senior officer specialists, 49 officers and 51 clerical/administrative support staff. The person selected will undergo a full background investigation by the FBI. To apply, send original and five copies of both resume and cover letter to Mr. William T. Walsh, Clerk, United States District Court, Martin Luther King Jr. Federal Building and U.S. Courthouse, Suite 4024, 50 Walnut Street, Newark, NJ 07101. **Application deadline: by July 30, 1999.**

CHIEF PROBATION OFFICER, Southern District of Texas
The District Court for the Southern District of Texas seeks applicants for the position of Chief Probation Officer. The Chief Probation Officer administers and manages federal probation and parole services within the district. A bachelor's degree is required in a field of academic study such as criminal justice, criminology, psychology, sociology, human relations, or business or public administration. Advanced degree preferred. Six years are required of specialized, progressively responsible experience including management responsibilities in the investigation, supervision, counseling and guidance of offenders in community correction or pretrial programs. Salary: $84,434 - $125,002 (JSP 15 – JSP 18). Interested applicants should submit a letter and resume, with salary history, to Michael N. Milby, U.S. District Clerk, P.O. Box 61010, Houston, Texas, 77208. **Application deadline: Open until filled.**

CHIEF PRETRIAL SERVICES OFFICER, Middle District of North Carolina
The District Court for the Middle District of North Carolina is accepting applications for the position of Pretrial Services Officer. Salary $67,298 - $117,148 (JSP 14 – JSP 16), commensurate with experience. Individual selected must undergo full field investigation by FBI. Submit letter/resume and completed application form, including salary history, size of organizational budget, number and composition of personnel and functions managed, and dates of employment, together with references to Clerk of Court, U.S. District Court, Middle District of North Carolina, PO Box 2708, Greensboro, North Carolina 27402. To receive full vacancy announcement and application form, please call (336)332-6013. **Application deadline: June 30, 1999.**

DEPUTY CHIEF, BANKRUPTCY JUDGES DIVISION, Administrative Office of the U.S. Courts
The Administrative Office of the U.S. Courts seeks applicants for the Deputy Division Chief in the Bankruptcy Judges Division, Office of Judges Programs. Duties to be performed include assisting the division chief in planning, organizing, and supervising the work of the division, including personnel and administrative matters. Salary range: $93,508-$119,412. For further information, qualification requirements, and application procedures, please call the AO Personnel Office at (202) 502-3800 and request a copy of announcement #99-OJP-078. **Application deadline: July 2, 1999.**

DEPUTY COURT ADMINISTRATOR, Eastern District of Michigan, Detroit
The District Court for the Eastern District of Michigan seeks applicants for the position of Deputy Court Administrator. Applicants much have a bachelor's degree, 10 years of progressively responsible administrative experience in business or public service, at least six of which must have been in a position with substantial management responsibility. A master's degree in public, business or judicial administration is preferred or management experience in a court administrator's or clerk's office in a federal or state court. The Deputy Court Administrator is responsible for managing the operations unit of the clerk's office and overseeing the performance of the statutory duties of that office. Salary: $70,006 - $121,914 (JSP - 14-16). Interested candidates should call 313/234-5065 for a copy of the complete vacancy announcement. Submit a cover letter and resume to Personnel Office, U.S. District Court, 814 Theodore Levin U.S. Courthouse, Detroit, Michigan, 48226. **Application deadline: July 26, 1999.**

SENIOR STAFF ATTORNEY, Eleventh Circuit
The U.S. Court of Appeals for the Eleventh Circuit invites applications for a senior staff attorney position. The responsibilities of this position are both legal and administrative, and include supervising and managing the work of 47 staff attorneys and eight administrative staff members. Salary: $93, 545 - $118, 084 (JSP 16). Applicants may contact the court's personnel specialist at (404)335-6202 for a copy of the detailed vacancy announcement. Applications should be submitted to the Personnel Specialist, U.S. Court of Appeals, 56 Forsyth Street, N.W., Atlanta, Georgia, 30303. **Application deadline: July 30, 1999.**

ships requested two years ago. The Conference also asked Congress, as does S. 1145, to convert 10 existing temporary judgeships to permanent positions in the district courts.

In addition to creating new judgeships, S. 1145 would extend Article III status to the existing federal courts in the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

As the Senate Judiciary Committee begins consideration of the judgeship bill, Senator Charles E. Grassley (R-IA), chair of the Subcommittee on Administrative Oversight and the Courts, has written to Administrative Office Director Leonidas Ralph Mecham requesting the latest caseload statistics for the last five years for every jurisdiction affected by the Conference's judgeship request. Grassley has asked for the documentation for each court's decision to make a judgeship request and a description of any support or opposition for a judgeship. In addition, he has asked for detailed information on the utilization of senior, visiting and magistrate judges; recommendations by any committee or judges group on resource utilization; and non-case related travel by judges.

Juvenile Justice Bill Includes Judgeships

A week before Leahy introduced his judgeship bill, the Senate passed S. 254, the Violent and Repeat Juvenile Offender Accountability and Rehabilitation Act of 1999, the so-called Juvenile Justice bill. Within the miscellaneous provisions of the bill's Title XVI, is the Emergency Federal Judgeship Act of 1999, creating new district judgeships. The bill would create three permanent judgeships for the District of Arizona; four permanent judgeships for the Middle District of Florida; and two permanent judgeships for the District of Nevada. In total filings per judgeship, the District of Nevada, the Middle District of Florida, and the District of Arizona rank among the busiest in the nation.

The judgeships are dependent, of course, on the Juvenile Justice bill first surviving a House vote with the provision intact. Senator Charles E. Grassley (R-IA), who has opposed new judgeships, has threatened to strip out the judgeships at the House-Senate conference on the final version of the bill.

AO Selects Two Proven Leaders to Fill Key Senior Positions

Two faces familiar to both the federal court family and the Administrative Office have taken on new titles and new duties. Gregory D. Cummings, formerly chief of the AO's Budget Division, has moved up to be the new Deputy Assistant Director for the Office of Finance and Budget. John M. Hughes, formerly the Deputy Chief Probation Officer for the District of Arizona, is the new chief of the AO's Federal Corrections and Supervision Division. He succeeds Eunice Holt Jones, who retires this summer.

Gregory D. Cummings

Cummings began his career in federal government in 1974, the year he graduated from Catholic University of America with a degree in economics and accounting. In the next 14 years with the U.S. Secret Service, he served in the positions of accounting officer and budget officer. In 1988, he joined the Executive Office of the President, where he was budget officer for the Office of Administration. That was followed by two years as director of administration for the Office of National Drug Control Policy. He joined the AO in January 1994 as deputy chief of the Budget Division and was promoted to chief of the Budget Division in 1996.

Hughes has an extensive background in federal corrections. At the start of his career in corrections, he worked as a supervised release counselor for the Vera Institute of Justice in New York City. He began his federal career in 1977 as a pretrial services officer in the Eastern District of New York. In 1983, he joined the Federal Corrections and Supervision Division of the AO, where he served as a pretrial services specialist and a regional administrator.

John M. Hughes

Promoted to chief of the Division's Administrative Services Branch in 1990, Hughes became chief of the Operations Branch in 1993, and, beginning in 1995, served as chief of the Policy and Planning Branch. He also has worked in the AO's Office of Management Coordination. Hughes is a 1973 graduate of Iona College and holds a Master of Public Administration degree from New York University.

JUDICIAL MILESTONES

Appointed: Raymond T. Lyons, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of New Jersey, April 13.

Appointed: Lorraine Murphy Weil, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Connecticut, April 23.

Appointed: Robert E. Bacharach, as U.S. Magistrate Judge for the Western District of Oklahoma, March 29.

Appointed: William G. Bauer, as U.S. Magistrate Judge for the Western District of New York, January 4.

Appointed: Jeffrey W. Johnson, as U.S. Magistrate Judge for the Central District of California, April 20.

Appointed: Nancy M. Koenig, as U.S. Magistrate Judge for the Northern District of Texas, December 28.

Appointed: Karen Ballard Molzen, as U.S. Magistrate Judge for the District of New Mexico, April 26.

Elevated: Judge Roger L. Wollman, to Chief Judge, U.S. Court of Appeals for the Eighth Circuit, succeeding Judge Pasco M. Bowman II, April 24.

Elevated: Bankruptcy Judge Bruce I. Fox, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for Eastern District of Pennsylvania, succeeding Bankruptcy Judge David A. Scholl, April 5.

Elevated: Bankruptcy Judge Arthur J. Spector, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of Michigan, succeeding Bankruptcy Judge Stephen W. Rhodes, April 14.

Elevated: Bankruptcy Judge Douglas D. Tice, Jr., to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of Virginia, succeeding Bankruptcy Judge Martin V. B. Bostetter, Jr., February 10.

Elevated: Bankruptcy Judge Thomas F. Waldron, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Ohio, succeeding Bankruptcy Judge William A. Clark, April 30.

Senior Status: Judge John M. Duhe', Jr., U.S. Court of Appeals for the Fifth Circuit, April 7.

Retired: Chief Judge George W. White, U.S. District Court for the Northern District of Ohio, February 26. (Judge White was incorrectly listed in the March issue as taking senior status.)

Retired: Magistrate Judge Rupert J. Groh, U.S. District Court for the Central District of California, January 4.

Retired: Magistrate Judge Pat Irwin, U.S. District Court for the Western District of Oklahoma, February 28.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of June 1, 1999

Courts of Appeals	
Vacancies	21
Nominees	13
District Courts	
Vacancies	47
Nominees	29
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	24

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

1999-2000 Judicial Fellows Selected

Amie Clifford, Richard Mendales and Mark Miller are the Judicial Fellows selected for the 1999-2000 term.

The Judicial Fellows Program begins each year in late August or early September. Founded by Chief Justice Warren Burger in 1973 and patterned after the White House and Congressional Fellowships, the program provides fellows with an opportunity to study firsthand the administration of justice in the federal Judiciary. Typically, Judicial Fellows are outstanding individuals from diverse disciplinary backgrounds who show promise of making a contribution to the Judiciary.

Richard E. Mendales will be a Judicial Fellow at the Administrative Office. He is a professor of law at the University of Miami Law School, where his areas of scholarship include bankruptcy, business associations, legal ethics, and securities regulation. He has served as chair of the Law School's Disability and Placement Committees and of the Humanities Subcommittee of the University Research Council. His publications include, "Looking Under the Rock: The Disclosure of Bankruptcy Issues Under the Securities Laws." Mendales received his A.B. and A.M. from and is a Ph.D. candidate at the University of Chicago. He earned his J.D. from Yale Law School, and practiced law for several years in New York.

Richard E. Mendales

Mark C. Miller

Mark C. Miller will be a Judicial Fellow at the Supreme Court. He is an associate professor of American government at Clark University in Worchester, Massachusetts, where he received the Outstanding Teacher of the Year award, and the Oliver and Dorothy Hayden Junior Faculty Fellowship Award for excellence in teaching and research. His publications include "The High Priests of American Politics: The Role of Lawyers in American Political Institutions." Miller received his B.A., with high distinction, from Ohio Northern University, and his J.D. from the National Law Center at George Washington University, where he was associate editor of *The George Washington Journal of International Law and Economics*. After law school, Miller served as legislative assistant for several members of Congress, then went on to receive his M.A. and Ph.D. in American politics from Ohio State University.

Amie L. Clifford will be a Judicial Fellow at the U.S. Sentencing Commission. She is an assistant solicitor in the Office of the Solicitor of the Ninth Judicial Circuit, Charleston County, South Carolina, where she was responsible for the development of prosecution and investigation protocols for domestic violence cases, and the prosecution of domestic violence related crimes. Clifford previously served as an assistant attorney general in the Criminal Appeals Section of the South Carolina Attorney General's Office, and as a staff attorney with Piedmont Legal Service, Inc. She has taught and written extensively on criminal law and procedure. She co-authored *The South Carolina Criminal Trial Techniques Handbook* and she has been a contributing author for *South Carolina Jurisprudence*. Clifford received her B.A. from Northwestern State University of Louisiana, and her J.D. from the University of South Carolina School of Law.

Amie L. Clifford

Joseph F. Spaniol Jr. Reflects on AO's Role

Joseph F. Spaniol Jr. joined the Administrative Office of the U.S. Courts in 1951, just 12 years after its inception. His career spanned 34 years and the tenures of all the Administrative Office directors with the exception of Leonidas Ralph Mecham. During those years he was first an attorney in the Office of Procedural Studies and Statistics, then, in the late 1960s, he became the AO's attorney for legal affairs in what would eventually become the Office of the General Counsel. Spaniol left the AO in 1985 to become Clerk of the Supreme Court, but he continues his close ties to the AO as consultant to the Rules Committee.

Q: When did you join the Administrative Office, and what was the AO like then?

A: I joined the AO staff in the fall of 1951. Henry P. Chandler, the first Director to be appointed, was still serving as Director. The entire AO numbered about 111, all of whom were located in the Supreme Court Building. Everyone knew each other, and we were all acquainted with the Supreme Court staff, with whom we lunched daily in the court's cafeteria.

When I arrived, the AO consisted of four divisions: the Business Administration Division, the Bankruptcy Division, the Probation Division, and the Division of Procedural Studies and Statistics, where I was originally assigned as an attorney. At that time the Division was responsible for most of the legal work in the AO, including services to most Judicial Conference committees. The division's first responsibility, of course, was to compile information on the operation of the courts and to publish statistics on cases being filed. A small staff compiled the statistics. Also, the division regularly sent its attorneys (there were only three or four) into the field to inspect court dockets and to file reports usually in connection with the need for more judges.

The AO remained in the Supreme Court Building until after Henry Chandler's retirement in 1956. About a year elapsed before Chandler's successor was named by the Supreme Court and during that period the AO began moving to new quarters in southwest Washington. In 1958, Warren Olney III became the new director. He and the deputy director, however, kept their offices in the Supreme Court building.

Q: What was happening in the courts at that time?

A: Following World War II, the caseloads of the courts began growing. Congress responded with new judgeship bills in 1949, 1954, and 1961. With more judges came a need for more personnel and additional courtrooms and facilities. Growth produced new programs. To deal with them, the Judicial Conference authorized the Chief Justice to appoint a new Committee on Court Administration. That committee immediately began reviewing and making recommendations on such matters as the tenure of chief judges, the retirement of judges, the representation of district judges on the Conference, and compensation for widows of judges. These were unusually busy and exciting times in the AO.

Joseph F. Spaniol Jr.

Q: Was there thought then of building an office just for the AO?

A: Early on, Olney looked into the prospects of constructing a new building on property located immediately behind the Supreme Court building that would house the entire AO staff. Preliminary architectural drawings were even made, but opposition by those who wanted to preserve the existing historical buildings on that site and a general lack of interest doomed the project.

Q: How did Director Olney put his mark on the AO?

A: Olney's management style was different from that of his predecessor. Henry Chandler had been involved with all aspects of the work of the AO. Director Olney delegated the responsibility for managing the day-to-day activities of the AO to others so that he and the deputy director could be free to work on special problems and projects. Two new assistant director positions were created, one for administration with responsibility for the Division of Business Adminis-

ation, and the other for legal and gislative affairs with responsibility r the Division of Procedural udies and Statistics and the Bank- ıptcy and Probation Divisions. It orked out very well for a while, but ithin a year or so the assistant rector for legal affairs resigned and at position was abolished in favor creating the Office of General ounsel.

Director Olney wanted to add me professional skills to some eas of the AO. He created a parate Division of Personnel and red a professional expert to head it. e also hired an expert from GSA to ndle building acquisition and ace matters with the GSA. By the ne Olney retired, the AO staff had most doubled in size.

Olney was in large measure sponsible for the Federal Judicial nter. A Judicial Conference mmittee with AO staff assistance as holding seminars for judges, rticularly newly appointed district dges, on a part-time basis. Olney ggested the creation of a separate it within the Judiciary to work ll-time on research and training d pushed hard for its creation. He so will be remembered for his work drafting what became the Federal agistrates Act and for his work in plementing the Criminal Justice t of 1964.

Q: Who succeeded Director Olney?

A: Ernest C. Friesen, Jr. succeeded Olney. He was a ented administrator with a fine ckground in judicial administra- n and had been the assistant orney general for administration der Attorney General Ramsey ark, but he served as the AO rector for only about two years. t they were extremely busy years. The Federal Magistrates Act had come law just before Olney retired. The Act required the Director to conduct a survey of the entire country and to make recommendations for the number, locations, and the salaries to be paid to the magistrates initially appointed under the Act. The task was quickly undertaken.

Friesen also helped the new FJC get established. He worked closely with Justice Tom Clark, the Center's first Director. They both wanted to secure contiguous space so that the FJC and the AO would be side-by-side. They managed to acquire historic Dolley Madison House on Lafayette Square, near the White House, for the first home of the FJC, and the Cosmos Building next door to house most of the AO staff. Three divisions—Business Administration, Personnel, and Procedural Studies and Statistics—were located across the street in the Lafayette Building.

About the time Earl Warren retired as Chief Justice, Friesen left the AO to form the Institute of Court Administration in Colorado. In 1970, the Supreme Court selected Rowland F. Kirks to be the fourth Director of the AO. Kirks changed the alignment of divisions in the AO to offer better service to the courts and to the Conference, added new divisions, and continued the close relationship with the FJC that Friesen had established. After more than seven years in office, Director Kirks became ill and died.

William E. Foley, who was then the deputy director, was selected by the Supreme Court to succeed Kirks. Foley had been the deputy director for 13 years and because of his experience had worked closely with Kirks on all matters of organization and policy. Thus his transition to the Directorship meant a continuance of the policies then in force. But the work at the AO did grow a great deal under Foley and changes were made as needed.

Q: What services were the courts asking for from the AO?

A: By the time Foley became the Director, the courts were asking for automation. The AO was already automating the entire Judiciary payroll. Statistical compilation was automated, as were payments made to compensate lawyers appointed under the Criminal Justice Act. But the courts were now asking for automated dockets. Development started out at the FJC, and there was a joint committee on automation chaired by assistant directors from the AO and the FJC. The appropriations committees in Congress felt, however, that the FJC should devote itself to research and training, so the docket automation project, together with staff was gradually shifted to the AO and a new Automation Division was created. That division soon began offering direct help to the bankruptcy courts. The number of bankruptcy cases was increasing and the bankruptcy courts were seeking help in processing notices. At one time the AO had a computer—huge for its day—that processed thousands of notices for bankruptcy courts across the country.

During Kirks' tenure the office of circuit executive was created. Selections were made and later on the executives began asking for a little more control over the expenditure of funds so they could better administer their circuits. Under Foley, limited authority was first extended and that set the groundwork for later decentralization.

Q: Was William Foley the last director you served under at the AO?

A: That's right. Ralph Mecham and I were sworn in on the same day in 1985; he as Director of the AO, and I as the Clerk of the Supreme Court.

National Conference Looks at Increasingly Dangerous Population

Over 300 federal probation and pretrial officers attended the first National Substance Abuse and Mental Health Conference in New Orleans last month. Although regional conferences have been held in the past, this was the first time officers from every federal court had gathered for a national Conference on this topic. The Conference was appropriately entitled, "Meeting the Challenge of the New Millennium."

Chief Judge Charles R. Butler, Jr. (S. D. Ala.), a member of the Judicial Conference Committee on Criminal Law, welcomed conference participants. "Our committee members are very well aware that substance abuse and mental health cases are the most difficult to supervise. They are dangerous, highly unpredictable, and raise officer safety issues," said Butler. "Appropriate supervision of these offenders is a committee priority and we are committed to providing adequate resources to accomplish the mission of the court."

He also expressed his appreciation for the fine work of the officers on the front line of correctional treatment. "You are the experts the courts look to for treatment and sentencing options, and direction in dealing with offenders," said Butler.

In recent years, there has been a dramatic increase in substance abuse and mental health defendants and offenders. Ten years ago, 17,409 offenders required treatment. In 1998, 48,914 persons were ordered by the courts to have either drug treatment or mental health treatment, either pretrial or during post-conviction supervision.

The four-day conference was conceived as a forum for staff in the Administrative Office Federal Corrections and Supervision Division and for drug and mental health specialists in district offices to address how treatment issues affect the supervision of offenders and defendants. Nationally known experts conducted a series of workshops that ran the gamut of "hot issues" in supervision, including such topics as communicable diseases, federal prison drug abuse programs, medications, drug addiction, and the physiological effects of drugs and alcohol on the body. Experts also discussed treatment issues for women, interviewing strategies for the investigation and supervision of sex offenders, the warning signs of relapse, and the legal issues surrounding mental health cases. Presentations were accompanied by problem-solving models to ensure that participants had the opportunity to exchange ideas and learn from problems. Many presentations were videotaped and will be used for future distance learning training.

THE THIRD BRANCH

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Judiciary Sees Crisis in FY2000 Budget Bill

The Senate Appropriations Committee has reported out a Judiciary appropriations act for fiscal year 2000 that is so tight, the federal Judiciary will face a serious shortfall if it is enacted into law. S. 1217, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1999, leaves the Judiciary with insufficient funds to support current services in FY 2000.

The full committee recommended an appropriation of $3.8 billion for FY 2000 for the Judiciary. The Senate is expected to consider the bill when it returns from its July 4th recess. The House Appropriations Committee has yet to schedule consideration of similar legislation.

In a letter to congressional leaders, Administrative Office Director Leonidas Ralph Mecham wrote, "The Senate mark reflects an actual reduction below current services. The Judicial Branch requires an increase of $267 million just to remain even with current services and to provide modest increases in critical areas of court security and defender services. . . . The Judiciary urges Congress to take whatever measures necessary to ensure that the Third Branch receives the funds necessary to provide the kind of justice to this nation's citizens that is guaranteed under the Constitution and the laws of the land."

Shortfalls will occur in nearly all Judiciary programs. There is a $211 million shortfall in the Salaries and Expenses account, a $43 million shortfall in Defender Services, and a $10 million shortfall coming for Court Security. Only the Fees for Jurors account was fully funded.

The full committee report acknowledges that "steady growth in costs associated with Defender Services, court security, GSA rental payments, and pay and benefits at a time of declining resources is putting serious pressure on the Judiciary budget." The committee urged the Judiciary to "make every effort to contain mandatory costs."

However, unlike the Executive Branch, the Judiciary does not have projects that can be cut. Mecham wrote, "Congress and the Department of Justice determine the Judiciary's workload. Litigants cannot be turned away. The many thousands of felons under probation cannot be released from supervision.

See ***Crisis*** *on page 2*

INSIDE

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INTERVIEW

Judge Wm. Terrell Hodges represented the Judicial Conference in hearings before congressional committees.

Opportunity and Challenge: An Interview with Judge Wm. Terrell Hodges

Judge Wm. Terrell Hodges was appointed to the District Court for the Middle District of Florida in 1971. He has served on Judicial Conference committees since 1982. He has been a member of the Executive Committee since 1994, and the committee's chair since 1996.

See ***Interview*** *on page 9*

Crisis continued from page 1

If Congress expects the Judiciary to perform the work Congress assigns, then funding must be provided."

Mecham noted a shortfall of $211 million in funding for court staff that could leave vacant positions unfilled and furlough or layoff approximately 2,300 currently funded staff—during a time of increasing civil, criminal, and bankruptcy cases. Some districts would have difficulty complying with the time requirements of the Speedy Trial Act, fewer civil cases could be processed, bankruptcy cases would be delayed, and probation officers would need to reduce the amount of time spent supervising felons. Courts would have insufficient funding to adequately support court operations, maintenance, and service to the public.

In the Defender Services area, the Judiciary would not be able to pay court appointed panel attorneys after June—even though the Constitution and the Criminal Justice Act (CJA) require the appointment of representation for defendents unable to pay for counsel. Attorneys unwilling to accept CJA appointments due to deferred payments could cause trials to be postponed or delayed. At a time of increasing threats to judicial officers, court security also would be impinged, with cuts to court security officer staffing and reductions to, or elimination of, physical security systems enhancements.

The Senate committee, in its report, recommended the U.S. Sentencing Commission receive less than half its requested FY 2000 appropriation. Further, the Committee recommended that the Judiciary reassess the Commission's necessity and that a phase-out plan for the Commission be provided before November 31, 1999, if no commissioners have been appointed by October 1, 1999. (See article on page 6.) At that time the Commission would have been without commissioners for a year. "The Committee observes that the carriage of justice has continued unabated in the absence of commissioners," the report explains. No amendments can be made to the U.S. Sentencing Guidelines, nor action taken on congressional directives without at least four commissioners actively serving on the U.S. Sentencing Commission.

Hearings on Judicial Nominees Resume

At its first judicial nomination hearing of the year, on June 16th the Senate Judiciary Committee considered eight nominees—two for the courts of appeals and six for the district courts. A week later five district court nominees were reported out by the Committee and sent to the Senate where they were confirmed just before the July 4th recess. The three remaining nominees, including two nominees to the 9th and 2nd Circuits, weren't reported by the committee until the last week of June and the Senate did not act on them. Earlier this year the Senate confirmed two district judges who were hold-overs from the previous Congress.

According to various published reports, judicial nomination hearings were stalled this year because of disagreements between the Clinton Administration and the chairman of the Senate Judiciary Committee, Senator Orrin Hatch (R-UT), over the nomination of Utah lawyer Ted Stewart.

The purported standoff came to an end with the hearing on June 16th. Hatch and the President reportedly have come to an understanding that if Stewart, currently chief of staff to the Governor of Utah, is approved by the FBI and the ABA, he will be nominated. In addition, Senator James Inhofe (R-OK), who had objected to the recess appointment of James Hormel as ambassador to Luxembourg and threatened to hold all civilian nominees from consideration, has removed his objection.

The decision removes an additional impediment to Senate consideration of nominations.

In a statement released at the Judiciary Committee hearing, Ranking Minority Member Patrick Leahy (D-VT) cited Chief Justice William H. Rehnquist's *1998 Year End Report on the Judiciary* that warned, "Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary." Leahy pushed for more hearings to be held soon on pending judicial nominees.

In his own statement Hatch said, "I am confident that by the end of the Session, the Committee will have done a fair and even-handed job of evaluating and approving judicial nominees—just as it has done in previous years." Hatch said that it was his expectation that the work of the committee would continue at a reasonable pace throughout the year.

As of July 1 there were 40 judicial nominees pending for 69 vacancies. While no new judgeships have been created in nearly nine years, S. 254, the Senate-passed juvenile justice bill, and H.R. 1501, the House-passed version of the bill, would create district court judgeships in Arizona, Nevada, and the Middle District of Florida.

H.R. 1752 Addresses Needs of Federal Court System

A representative of the Judicial Conference appeared before Congress last month to urge passage of a bill that would improve the effectiveness and efficiency of the federal Judiciary. Judge Harvey Schlesinger (M.D. Fla.), chair of the Conference Committee on the Administration of the Magistrate Judges System, testified before the House Judiciary Subcommittee on Courts and Intellectual Property on H.R. 1752, the Federal Courts Improvement Act of 1999. Magistrate Judge Joel B. Rosen (D. N.J.) also testified at the hearing on behalf of the Federal Magistrate Judges Association, of which he is president. He was accompanied by Magistrate Judge Robert B. Collings (D. Mass.).

The bill contains 42 separate provisions and touches upon a wide range of issues including federal court jurisdiction, the authority of judicial officers and judicial branch personnel, and administrative operations. Twenty-nine of the bill's provisions passed the House last Congress in the bill, H.R. 2294. In the 106th Congress, H.R. 1752 was introduced in the House by subcommittee chair Howard Coble (R-NC) and ranking subcommittee member Howard L. Berman (D-CA).

In his testimony on H.R. 1752, Schlesinger addressed a provision that would provide magistrate judges with summary criminal contempt authority to punish any misbehavior occurring in their presence. "The need for power to immediately vindicate the court's authority in the face of disruptive behavior," Schlesinger told the subcommittee, "exists whenever a

See ***H.R. 1752*** *on page 4*

H.R. 1752, the Federal Courts Improvement Act of 1999, contains provisions touching on a wide range of issues, some of which would:

- Provide that, unless the party files a timely objection to a bankruptcy judge's proposed findings of fact and conclusions of law, that party will be deemed to have consented to them and they become final. The Department of Justice opposes this provision.
- Authorize the reimbursement of the Judiciary from the Asset Forfeiture Fund for costs arising from the forfeiture of assets of defendants. DOJ opposes this provision as an inappropriate mechanism.
- Increase filing fees for certain bankruptcy cases to reflect more accurately the resources required to process the case and to correct inconsistencies. DOJ opposes allowing bankruptcy administrators to place Chapter 11 quarterly fees into a fund to be used by the entire Judiciary.
- Create certifying officers in the judicial branch to enhance financial accountability and improve utilization of administrative resources.
- Provide the Judiciary with the authority to set, collect, and retain fees for the use of electronic filing, videoconferencing and electronic evidence presentation devices. DOJ opposes the imposition of these fees on government agencies.
- Repeal in-state plaintiff diversity jurisdiction. DOJ opposes this provision's modification of diversity jurisdiction.
- Provide statutory authority for bankruptcy administrators in Alabama and North Carolina to appoint trustees, examiners, and committee of creditors. DOJ has reservations about the efficacy of this provision.
- Extend statutory authority for magistrate judge positions to be established in the district courts of Guam and the Northern Mariana Islands.
- Establish a place of holding court in the Eastern District Of Texas.
- Reauthorize the federal substance abuse treatment program for fiscal year 1999 and subsequent years.
- Allow a transferee judge to retain cases for trial or transfer those cases to another judicial district for trial (Multidistrict Trial Jurisdiction Act of 1999).
- Provide for participation of senior judges as members of the circuit judicial councils, as recommended in the Long Range Plan for the Federal Courts.
- Modify the "rule of 80" to permit a judge with 20 years in service who has reached age 60 to take senior status, although the minimum age for a judge's retirement remains age 65 with at least 15 years in service.
- Permit the U.S. Court of Appeals for the Federal Circuit to appoint a clerk of court/circuit executive.
- Amend the Jury Selection and Service Act to permit the chief judge to authorize the clerk of the court, under supervision of the court, to determine whether persons are qualified, unqualified, exempt, or excused from jury service.
- Shorten the number of days that a juror is required to serve before he or she is eligible for the supplemental daily fee.
- Exempt federal public defender organization officers and employees from the Federal Tort Claims Act for claims related to representational services.
- Eliminate the mandatory retirement age for the Director of the Federal Judicial Center, now set at 70.

H.R.1752 continued from page 3

magistrate judge presides for the district court regardless of litigant consent."

Rosen testified that the bill limits the penalties imposed by magistrate judges in contempt situation, but provides the authority needed to conduct the business of the district court effectively. The provision was contained in H. R. 2294, which passed the House in the last Congress. The Department of Justice has expressed the view that this exercise of contempt authority could be held unconstitutional, as a power belonging solely to Article III judges.

Testifying before the House Judiciary Subcommittee on Courts and Intellectual Property on the Federal Courts Improvement Act of 1999 were Magistrate Judge Joel B. Rosen (D. N.J.), Magistrate Judge Robert B. Collings (D. Mass.), and, for the Judicial Conference, Judge Harvey Schlesinger (M.D. Fla.).

Schlesinger also testified in favor of a provision that directly relates to the personal safety of federal judicial officers. Because of safety concerns raised by a significant increase over the past 10 years in threats against judges and their families, federal judicial officers may choose to carry firearms. A provision in H.R. 1752 would effectively require judges who carry firearms to successfully participate in a training and safety program. The provision also would provide that federal judges are, in most circumstances, exempted from state and local firearms laws and regulations. "When they cross state lines, the firearms license from their home state loses its effect," said Schlesinger. "Because of this, judges in travel status often are not able to be armed. Clearly, if a judge is in danger, the fact that he or she is in one state or the other does not eliminate the danger."

H.R. 1752 also would repeal the automatic excuse from jury service now granted to members of the Armed Forces, members of fire and police departments, and public officials—which even bars from service elected or appointed officials such as school board officials, state legislators, as well as secretaries and clerks appointed by these officials. "These exemptions were established in 1948 on the assumption that it would be a waste of time to include on juries persons whose jobs affect public health, safety, or welfare," Schlesinger testified. "More recent experience has indicated, however, that many individuals who fall within the scope of these exemptions could easily serve."

H.R. 1752 also addresses recommendations of the Federal Courts Study Committee; improvements to the judicial process including limitations on the removal to federal court of cases under the Employee Retirement Income Security Act; the elimination of in-state plaintiff diversity jurisdiction; a modification of the "Rule of 80" to allow judges to take senior status at age 60 with 20 years of service; and expanded workers' compensation coverage for jurors, the elimination of the public drawing requirement for selection of juror wheels, and other modifications to the jury selection process.

Title V of the bill would increase the maximum compensation amounts for Criminal Justice Act attorneys by approximately the rate of inflation since 1986 (43.3 percent), the last year case compensation maximums were increased. The section also would change the case compensation maximum applicable to counsel representing non-capital habeas corpus petitioners, as well as the compensation maximums of investigators, experts, and other service providers. It is not anticipated the changes would have a significant budgetary impact because chief judges of the courts of appeals (or their designees) already have the authority to approve compensation in excess of the statutory limits in appropriate cases.

The complete text of the Federal Courts Improvement Act of 1999 can be found on the Judiciary's website at www.uscourts.gov. under "What's New."

The subcommittee also heard testimony on H.R. 2112, the "Multidistrict, Multiparty, Multiforum Jurisdiction Act of 1999." The bill was introduced by Representative James Sensenbrenner (R-WI), and would amend the multidistrict litigation statute by allowing a transferee court to retain jurisdiction over referred cases for trial, or refer them to other districts. Judge John F. Nangle, chair of the Judicial Panel on Multidistrict Litigation, testified in support of the legislation.

Judges' COLA Remains on Track

While S. 1217, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1999, is notable for what it lacks in terms of funding for the Judiciary, it does contain some good news for federal judges—a waiver of section 140 of P.L. 92-97. Section 304 of the bill would permit a cost-of-living adjustment for justices and judges of the U.S in fiscal year 2000, assuming a COLA is not otherwise prohibited. Congress must take positive action, in the form of a waiver of section 140, if judges are to receive a COLA of 3.4 percent in January 2000. The adjustment is provided under the Ethics Reform Act of 1989. The Treasury And General Government Appropriation Bill 2000 passed by the Senate is silent on a COLA for judges.

Federal judges have received only a single COLA since 1993, a nominal 2.3 percent increase. In that time, federal judges have seen the value of their salaries decline by about 16.42 percent when measured against the Consumer Price Index. Since 1993, circuit judges and district judges have lost about $81,876 and $77,206 in purchasing power, respectively.

However, the S.1217 provision may not be enough to guarantee a COLA. The House has less money to work with than the Senate, so budget cuts could endanger any COLA for House staff, and it would be highly unlikely members of Congress would give themselves an increase when their staffs go without. Further, Representative Porter J. Goss (R-FL) recently introduced legislation that, if enacted, would provide that a members' COLA could be no higher than a similar adjustment for Social Security recipients. For fiscal year 2000, this could result in something less than a 3.4 percent pay adjustment.

Judge David Hansen (8th Cir.), in his capacity as chair of the Judicial Conference Committee on the Judicial Branch, with other federal judges, the federal judges associations, Administrative Office Director Leonidas Ralph Mecham, and Administrative Office staff, continue to press congressional leaders to give federal judges a COLA, and to waive section 140. Leaders have been generally supportive, but in light of the budget outlook, are less encouraging than at the start of the budget process.

In the area of pay compression, however, the picture may be brighter. A provision doubling the President's salary, effective January 20, 2001, passed the House Appropriations Subcommittee on Treasury, Postal Service and General Government. The raise could ease the problem of pay compression that is squeezing the salaries of other high-level government officials.

Ironically, the pay restraint pressures are arising just as Executive Branch agencies are starting to experience pay-related recruitment and retention problems. The PriceWaterhouseCoopers Endowment for the Business of Government recently cautioned that "inadequate salaries [may] become a major obstacle to both recruiting and retaining senior career civil servants."

Oldest Active Federal Judge Dies

Judge Giles Sutherland Rich, U.S. Court of Appeals for the Federal Circuit, died last month at the age of 95. He never took senior status, although he would have been eligible to do so 27 years ago. Chief Judge Haldane Robert Mayer (Fed. Cir.) sat with Rich on a case a month before his death. In announcing Rich's passing to the court Mayer said, "The law has lost a legend, the court has lost an institution, and we all have lost a friend. But what a wonderful long life he had." A special session of the court will be held September 27 to commemorate the life and career of Judge Rich. For further information on the session, contact the Office of the Clerk, Federal Circuit.

Judge Giles S. Rich (Fed. Cir.)

The following are excerpts from a 1994 Third Branch interview with Rich.

Judge Giles Sutherland Rich (Fed. Cir.) said there are three reasons why he has never taken senior status with its reduced caseload and relaxed lifestyle that some choose after meeting the statutory age and service requirements. "First, I like my work," said Rich. "Second, I think I'm doing something useful and that gives me a great deal of satisfaction. Third, I can't imagine what I would do if I retired." With a full caseload and no plans for senior status in sight, Rich is on the road to

*See **Rich** on page 6*

Rich continued from page 5

being the oldest active federal judge ever.

"I think retirement shortens your life," Rich said. "I have seen it happen all too often. The way I keep up with what's going on in the world is through a constant stream of young law clerks. We have lunch together nearly every day, and they keep me up to date," said Rich.

Born May 30, 1904, in Rochester, New York, Rich began his legal career in his father's New York City patent and trademark law firm in 1929. He rapidly developed an expertise in the field and today is widely regard as "the dean of modern patent law. Active in the New York Patent Law Association and a recognized lecturer on patent law, Rich was nominated to the Court of Customs and Patent Appeals (CCPA) in 1955 by President Eisenhower.

Rich said he recalls reporting to work on the CCPA and asking the chief judge how much staff he could hire. "I was told I could have either a secretary or a law clerk," said Rich. "The old CCPA was a sleepy place that heard less than a hundred cases a year—all en banc. I used to have time to play around in my dark room at home and vacation in the weekend place I built in Newtown, Connecticut." Now, Rich said, the CCPA's successor court, the Court of Appeals for the Federal Circuit (CAFC) sits throughout the year without a recess. When Rich and his wife manage to get away to their Connecticut home, the fax machine there runs constantly. "If you don't keep up, the work piles up, so I use the fax machine as a link with the court when I am out of town."

With the merger of the CCPA and the U.S. Court of Claims on October 1, 1982, Rich became a judge on the newly created CAFC. Rich admits to some degree of uncertainty when he first learned that his docket would expand beyond intellectual property and customs cases. "At first I told people that I was not delighted but diluted," Rich recalls. "But as time went on I also became delighted and have found the experience to be intellectually broadening." Rich added that the "court has been a huge success in terms of clarifying patent law." In addition to hearing appeals from the Patent and Trademark Office, the CAFC's docket also includes cases from all of the U.S. district courts in patent suits, from the U.S. Court of Federal Claims, the U.S. Court of Veterans Appeals, the International Trade Commission, the Merit Systems Protection Board, and the Board of Contract Appeals.

After 27 years in private practice, 14 years of part-time teaching, and nearly 39 years on the bench [as of 1994], Rich has no difficulty singling out a career highlight. More than four decades ago, Rich was on the two-man drafting committee of the bar group that drafted the Patent Act of 1952, which revolutionized the standard for issuing patents. Perhaps most noteworthy to Rich were the succeeding 14 years that he spent speaking, writing, and trying to convince others of the impact of the act, which replaced the undefinable, judge-made requirement of "invention" with the more concise statutory concept of defined "nonobviousness" (35 U.S.C. § 103). Rich said, "Judges were not applying the new act, and I was concerned that it would be adjudicated out of existence as the same old law merely 'codified.' One of the greatest things I think I did was to make certain, from my strategic position on the CCPA, that this did not happen."

As Rich approaches his ninetieth [in 1994] birthday, the excitement and focus remain. "As long as I find the work challenging and interesting and feel that I can continue making a contribution, I plan on being here," said Rich. "It sure beats living in a retirement home."

Commission Members to be Nominated

President Clinton has announced he will make seven nominations to the U.S. Sentencing Commission after the July 4th recess. The Commission has been without commissioners since the end of the 105th Congress last October, when the terms of the last three members expired and the Commission chair, Judge Richard P. Conaboy, resigned October 31, 1998.

The nominees are Judge Diana E. Murphy (8th Cir.), who would serve as chair; Judge Ruben Castillo (N.D. Ill.); Judge Sterling Johnson, Jr. (E. D. NY); Judge Joseph Kendell (N.D. Tex.); Judge William K. Sessions (D. Vt.); Michael O'Neill, assistant professor of law, George Mason University School of Law; and John R. Steer, General Counsel of the Sentencing Commission. The nominees must be confirmed by the Senate.

By statute, the President appoints Commission members with the advice and consent of the Senate. One member is appointed by the Senate as chair, and three members by the President as vice-chairs. At least three of the members shall be federal judges, and not more than four of the Commission members shall be members of the same political party. Of the three vice-chairs, not more than two shall be members of the same political party. A quorum of four commissioners is required to amend the U.S. Sentencing Guidelines.

AUGUST 1999 PROGRAM CALENDAR
FOR THE FEDERAL JUDICIAL TELEVISION NETWORK

All times are Eastern Daylight Time

AGRICULTURAL BANKRUPTCY
August 11, 3:00, 4:00 p.m.; August 12, 3:00, 4:00 p.m.

BANKRUPTCY ORGANIZATION AND JURISOICTION
August 18, 9:00, 10:00, 11:00 a.m.; 12:00, 3:00, 4:00 p.m.; August 19, 9:00, 10:00, 11:00 a.m.; 12:00, 3:00, 4:00 p.m.

BASIC BROWSER USAGE
August 2, 12:00 p.m. (live); August 17, 9:30 a.m.; August 20, 3:00 p.m.; August 23, 9:00 a.m.

CIVIL SERVICE RETIREMENT SYSTEM
August 6, 11:00 a.m.; August 30, 11:30 a.m.; August 31, 11:00 a.m.

COURT TO COURT (JUNE 1999):
August 11, 11:30 a.m.; August 12, 11:30 a.m.; August 13, 11:30 a.m.

COURT PERSONNEL SYSTEM (COURT EMPLOYEES)
August 3, 9:30 a.m.; August 10, 10:00 a.m.; August 30, 1:30 p.m.

COURT PERSONNEL SYSTEM (JUDGES)
August 3, 10:00 a.m.; August 10, 10:30 a.m.; August 30, 2:00 p.m.

COURTROOM TECHNOLOGIES
August 2, 2:00 p.m. ; August 3, 4:00 p.m.; August 10, 12:00 p.m. ; August 17, 12:00 p.m.; August 20, 11:30 a.m.; August 24, 11:00 a.m. ; August 30, 1:00 p.m.

EXECUTIVE BRIEFING: TRAVEL REGULATIONS
August 30, 11:00 a.m.

FEOERAL EMPLOYEES RETIREMENT SYSTEM (FERS)
August 6, 3:30 p.m.; August 30, 9:00 a.m.; August 31, 12:30 p.m.

FJTN FROM WHERE YOU SIT
September 2, 12:00 p.m. (live)

FURNITURE ANO FURNISHINGS ACQUISITION
August 2, 10:00 a.m.; August 10, 8:30 a.m.; August 16, 9:00 a.m.; August 23, 3:30 p.m.; August 30, 2:30 p.m.

IN CAMERA:
Every Monday (except Labor Day, September 6th) at 8:30 a.m.; every Tuesday at 4:30 p.m.

INTROOUCTION TO CASE MANAGEMENT AND ELECTRONIC CASE FILING
August 17, 1:00 p.m. (live); August 31, 8:30 a.m.

INTROOUCTION TO NCIC 2000
August 6, 8:30 a.m.; August 10, 2:00 p.m. ; August 31, 2:00 p.m.

JUOICIARY BENEFITS INITIATIVE: LONG-TERM CARE
August 3, 8:30 a.m.; August 10, 11:00 a.m.; August 20, 8:30 a.m.; August 24, 11:30 a.m.; August 30, 4:00 p.m.

JUOICIARY BENEFITS INITIATIVE: LONG-TERM CARE -- OPEN SEASON
August 10, 1:00 p.m. (live); August 17, 8:30 a.m.; August 23, 12:00 p.m.; August 31, 10:00 a.m.
Long-Term Care - Plan Considerations
August 9, 2:00 p.m.
Long-Term Care --Update and Introduction to Flexible Benefit Plans
August 2, 9:00 a.m.

LEARNING TO LEAO: CHANGE OR DIE (PBS)
August 5, 2:55 p.m.

THE NEW FRONTIER: LEVERAGING HUMAN ASSETS (PBS)
August 13, 3:55 p.m.

PERSPECTIVES ON PROBATION ANO PRETRIAL SERVICES
August 25, 11:00 a.m.; August 26, 11:00 a.m.; August 27, 11:00 a.m.

PHARMACOLOGY OF DRUGS OF ABUSE
August 26, 12:00 p.m.

PRETRIAL SERVICES INVESTIGATIONS AND REPORTS TRAINING
August 9, 9:00 a.m.; August 16, 2:00 p.m.; August 20, 9:30 a.m.; August 24, 8:30 a.m.

SECURITY FOR JUDICIARY COMPUTER USERS
August 16, 1:00 p.m.; August 23, 11:00 a.m.

SPACE ANO FACILITIES COURTHOUSE PROJECTS
Program A: August 9, 11:30 a.m.; August 16, 10:30 a.m.
Program B: August 9, 12:30 p.m.; August 16, 11:30 a.m.

SUPREME COURT 1998-99: THE TERM IN REVIEW PARTS ONE, TWO, ANO THREE
August 4, 8:30 a.m.; 12:00, 2:30 p.m.; August 5, 8:30 a.m., 12:00 p.m.; August 11, 9:00 a.m.; August 12, 9:00 a.m.; August 13, 9:00 a.m.; August 25, 8:30 a.m.; 12:00, 2:30 p.m.; August 26, 8:30 a.m.; 2:00 p.m.; August 27, 8:30 a.m., 12:00, 2:30 p.m.

SURVIVAL SPANISH FOR PROBATION ANO PRETRIAL SERVICES OFFICERS
August 11, 12, 13, 18, and 19 at 1:00 p.m.

WOROPERFECT
6.1 to 8.0 Transition
August 9, 3:00 p.m.
8.0 Basics
August 2, 3:00 p.m.; August 20, 12:30 p.m.
Document Formatting
August 6, 2:30 p.m.; August 16, 4:00 p.m.; August 23, 2:30 p.m.
File Management
August 3, 11:00 a.m.; August 24, 12:30 p.m.
QuickFamily
August 6, 1:00 p.m.; August 17, 3:00 p.m.; August 23, 1:00 p.m.
Templates
August 3, 2:00 p.m.; August 24, 2:30 p.m.

CALENDAR DATES FOR
THE THIRD BRANCH

Vol. 31 Number 7 July 1999

AUGUST

1-3 **Sunday-Tuesday**
Committee on Financial Disclosure

2-4 **Monday-Wednesday**
Phase I Orientation for Magistrate Judges

9-11 **Monday-Wednesday**
National Workshop for District Judges II

12-13 **Thursday-Friday**
Executive Committee

23-27 **Monday-Friday**
Phase I Orientation for District Judges

SEPTEMBER

8-10 **Wednesday-Friday**
National Workshop for District Judges, III

15-16 **Wednesday-Thursday**
Judicial Conference of the United States

14-16 **Wednesday-Friday**
Workshop for Court of Appeals Judges

27-28 **Monday-Tuesday**
Advisory Committee on Bankruptcy Rules

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 31 Number 7 July 1999

CHIEF PROBATION OFFICER, Northern District of Illinois, Chicago
The District Court for the Northern District of Illinois seeks applicants for the position of Chief Probation Officer. A minimum of eight years of responsible management and specialized experience is required. Salary: $96,448 to $121,748, contingent on education and experience. Grade Range: JSP 16-01 to JSP 18-10 Progressively responsible experience in the investigation, supervision, counseling and guidance of offenders in community correction, probation and/or pretrial programs is required. Experience in fields such as education guidance counselor, social worker, caseworker, psychologist, substance abuse specialist, and correctional researcher may constitute a portion of the specialized experience. Specialized experience must be earned after the bachelor's degree is granted. Experience in police officer, FBI agent, customs agent, marshal or similar positions do not meet the requirements of specialized experience. First-time appointees to positions covered under law enforcement officer retirement provisions must not have reached their 37th birthday at the time of appointment. Job announcements and employment applications may be obtained by calling (312) 435-7633. Visit our web site at www.ilnd.uscourts.gov. **Application deadline: August 31, 1999**.

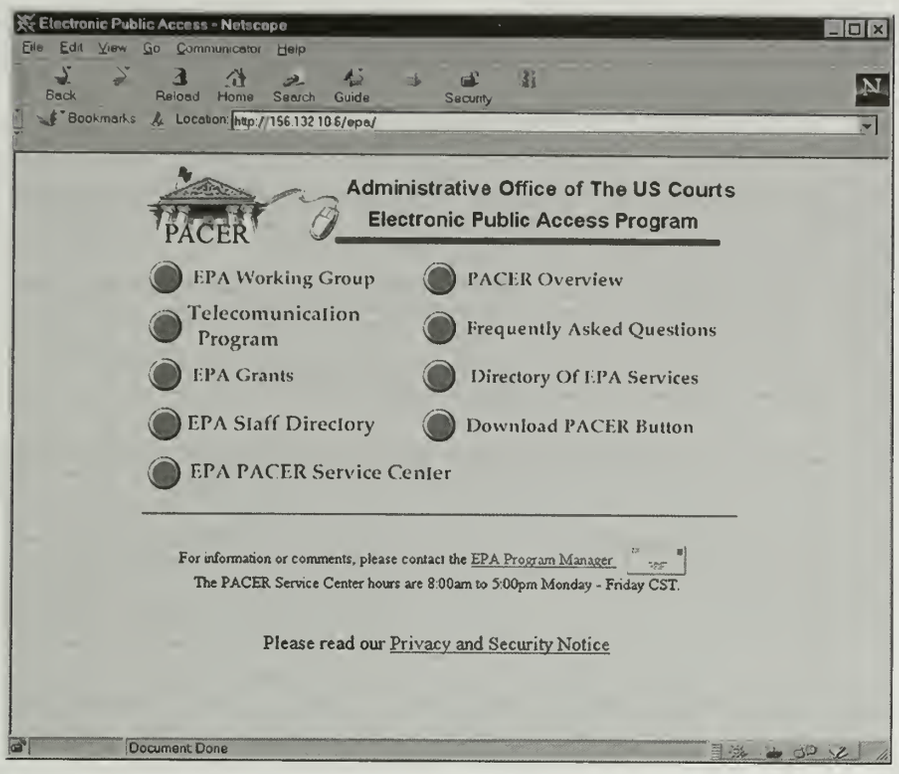
BANKRUPTCY JUDGESHIP, Central District of Illinois, Peoria
The Judicial Council of the Seventh Circuit is seeking applicants for a bankruptcy judge position for the U.S. District Court for the Central District of Illinois headquartered in Peoria. Applicants should be admitted to practice in at least one state court and be members in good standing of every bar of which they are members. Applicants should possess and have a reputation for integrity and good character and be of sound physical and mental health. Applicants must also possess and have demonstrated outstanding legal ability and competence as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes. The term of office is 14 years. Salary: $125,764. Persons interested in applying should send their applications to: Collins T. Fitzpatrick, Circuit Executive, Judicial Council of the Seventh Circuit, 2780 U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois 60604. **Application deadline: August 31, 1999**.

CLERK OF COURT, District Court of the Middle District of Florida
The District Court for the Middle District of Florida seeks qualified applicants for the position of Clerk of Court. Resident station is Orlando, Florida. Applicants must have an undergraduate degree and a minimum of 10 years of progressively responsible administrative experience in public service or business and a thorough understanding of personnel management, experience with developing spending plans and monitoring automation systems. Advanced degree in law, business or public administration is desired. Salary: JSP 17-18 ($106,628 - $117, 198). Full vacancy announcement can be requested by calling (407) 648-6748. Submit five copies of cover letter and detailed resume to U.S. District Court, Middle District of Florida, ATTN: 99-15, Clerk of Court Vacancy – Confidential, 80 N. Hughey Avenue, Room 300, Orlando, Florida 32801. **Application deadline: August 23, 1999**.

FEDERAL PUBLIC DEFENDER, Middle District of Florida
The U.S. Court of Appeals for the Eleventh Circuit is accepting applications for the position of Federal Public Defender in the Middle District of Florida. Salary: $118,300. Detailed position descriptions and application forms are available from any federal district court clerk in the Eleventh Circuit, or the Circuit Clerk, U.S. Court of Appeals. Seven copies of the application must be filed with Norman E. Zoller, Circuit Executive, 56 Forsyth Street, NW, Atlanta, Georgia 30303; telephone (404) 335-6535. **Application deadline: August 31, 1999**.

BANKRUPTCY JUDGESHIP, Northern District of Georgia, Atlanta
The U.S. Court of Appeals for the Eleventh Circuit invites applications from highly qualified persons for a 14-year term of appointment as U.S. Bankruptcy Judge in the Northern District of Georgia. The duty station for this position will be located at Atlanta, Georgia. Salary: $125,764. Application forms and the full announcement may be obtained from any district court or bankruptcy court clerk of the Eleventh Circuit or from the Circuit Executive in Atlanta. Further information concerning the position is available through Norman E. Zoller, Circuit Executive, United States Court of Appeals for the Eleventh Circuit, 56 Forsyth Street, NW, Atlanta, Georgia 30303; telephone (404) 335-6535. **Applications deadline: not later than August 31, 1999**.

PACER Arrives On the Net



Public Access to Court Electronic Records (PACER) has come to the Internet. Once accessible only by a modem and dialing directly to the PACER system, selected court systems now may be reached just like other websites.

To access, visit the Judiciary's website at www.uscourts.gov, click on *What's New*, and you'll come to the link to *Electronic Public Access*. Click again, and you're at the PACER Service Center on the Internet.

PACER is an electronic public access service that allows users to obtain case and docket information from federal appellate, district, and bankruptcy courts, and from the U.S. Party/Case Index. Presently seven bankruptcy and district courts are on the web with PACER, but over the next few months more than 90 sites are expected to be added.

Using PACER—either dial-in or on the Internet—is fast and simple, and anyone with a PC can use it. The system is available days, nights, and weekends. The case information it provides is comprehensive. Updates to active and recently closed cases can be confirmed in seconds. And from now until October 1, while PACER on the Internet is in its "shake-out" stage, access is free. However, beginning October 1, a user fee of $.07 a page will be charged. Charges for registered user access over the dial-in PACER system remain $.60 per minute.

With its electronic access to case dockets, the PACER System can retrieve such information as a listing of parties and participants including judges, attorneys, and trustees involved in a case; case-related information such as cause of action, nature of suit, and dollar demand; a chronology of dates of case events entered in the case record; judgments or case status; or a listing of new cases each day in the bankruptcy court.

Bankruptcy Judge J. Rich Leonard (E. D. N.C.), a member of the Electronic Public Access Working Group, said, "The ease of access to our records—particularly when the documents themselves are available—will fundamentally change the way we relate to the bar and public, and the way in which we internally do our work. In my own court, we have had imaged documents available on the Internet for the last six

See ***PACER*** *on page 8*

Judges's Updated Codes of Conduct Volume Now Available

It is in every judge's chambers and every clerk's office in every federal courthouse. Next to the federal civil and criminal codes, it's probably the most frequently consulted book in a judge's chambers. It's Volume II of the *Guide to Judiciary Policies and Procedures*—the Codes of Conduct volume.

The Judicial Conference Committee on Codes of Conduct recently reissued this ethical manual, replacing the old one in its entirety. The reissuance provides the most up-to-date versions of the Codes of Conduct, published advisory opinions, and ethics regulations. Also included is the 1999 edition of the Compendium of Selected Opinions, which summarizes unpublished advice of the committee.

"Ethics materials are continually updated," according to Judge Carol Bagley Amon (E.D. NY), chair of the Committee on Codes of Conduct, "and we add new materials to this volume every year. We hope that by reissuing the entire volume judges can be certain they are consulting the most current information." Updated volumes will have Transmittal 13 in the upper right corner of each page.

JUDICIAL MILESTONES

Appointed: William R. Sawyer, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Middle District of Alabama, May 24.

Appointed: Terry L. Wooten, as U.S. Magistrate Judge, U.S. District Court for the District of South Carolina, June 1.

Appointed: Frank S. Maas, as U.S. Magistrate Judge, U.S. District Court for the Southern District of New York, June 1.

Senior Status: Judge Lowell A. Reed, Jr., U.S. District Court for the Eastern District of Pennsylvania, June 21.

Senior Status: Court of Appeals Judge Walter K. Stapleton, U.S. Court of Appeals for the Third Circuit, June 2.

Retired: Court of Appeals Judge Joseph W. Hatchett, U.S. Court of Appeals for the Eleventh Circuit, May 14.

Resignation: Court of Appeals Judge Timothy K. Lewis, U.S. Court of Appeals for the Third Circuit, June 30.

Resignation: Bankruptcy Judge Hugh Robinson, U.S. Bankruptcy Court for the Northern District of Georgia, June 20.

Deceased: Magistrate Judge Ralph J. Geffen, U.S. District Court for the Central District of California, May 25.

Deceased: Magistrate Judge F. Steele Langford, U.S. District Court for the Northern District of California, June 4.

Deceased: Senior Court of Appeals Judge J. Edward Lumbard, U.S. Court of Appeals for the Second Circuit, June 3.

Deceased: Court of Appeals Judge Giles S. Rich, U.S. Court of Appeals for the Federal Circuit, June 9.

Deceased: Senior Judge Oliver Gasch, U.S. District Court for the District of Columbia, July 9.

Deceased: Senior Judge Kenneth K. Hall, U.S. Court of Appeals for the Fourth Circuit, July 8.

Deceased: Magistrate Judge Robin Dane Pierce, U.S. District Court for the Northern District of Indiana, July 5.

PACER continued from page 7

months. In that period of time, our website has had almost 500,000 hits, and the once daily phone calls from large institutional investors have virtually ceased."

Providing PACER on the web wasn't simply a matter of opening up a new website. Each court maintains its own database with case information. To move to the web, telephone lines and routers have to be installed and the PACER software must be converted to web technology.

The U.S. Party/Case Index, a national locator for U.S. district, bankruptcy, and appellate courts, is not presently available on the Internet, but is expected to be added in the not too distant future.

THE THIRD BRANCH

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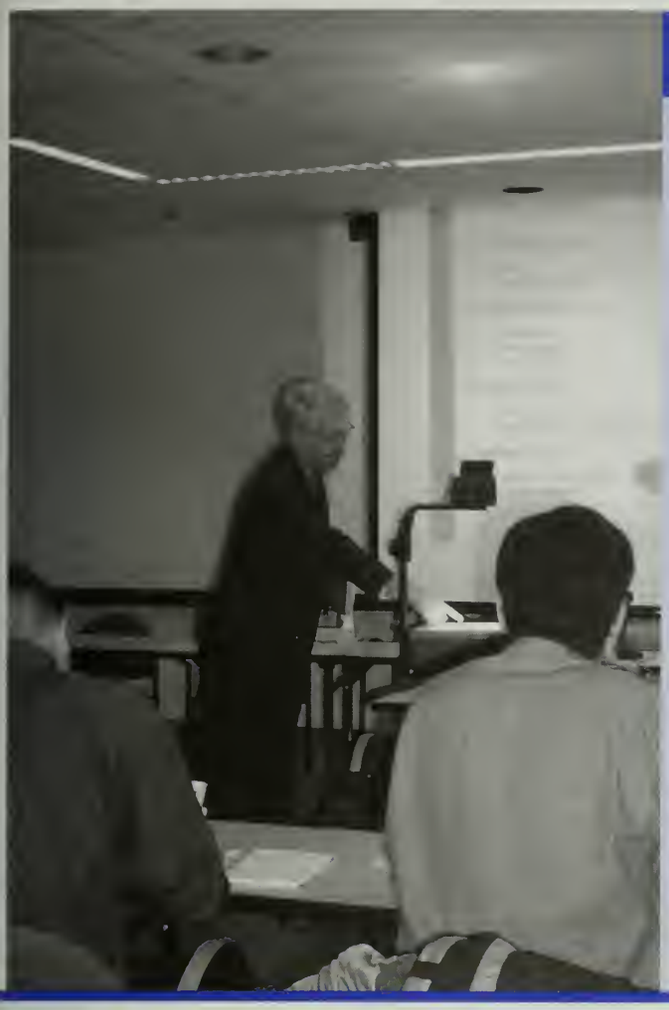
JUDICIAL BOXSCORE

As of July 1, 1999

Courts of Appeals	
Vacancies	25
Nominees	16
District Courts	
Vacancies	43
Nominees	24
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	23

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.



Press Days Offer Practical Advice

Increasingly, federal courts are bringing together representatives of the Third Branch and the Fourth Estate in an effort to have each learn more about the others operations and needs. Most recently, the Northern District of California hosted a seminar in May, titled, Covering the Federal Courts: Practical Advice and Tips for Success. The three hour-long seminar for reporters was presented by judges, reporters and members of the bar. Among the topics discussed were the basics of covering the court, what documents are available and where, tracking ongoing cases, and public access to the court.

Bench/bar/press conferences and seminars have been occurring for sometime, but court-sponsored programs for the press are a relatively new phenomena. While the state courts led the way in developing such programs, as early as 1986 the District of Arizona hosted a "Press Orientation Day." In 1990 the Federal Courts Study Committee recommended that courts should hold "press days" to facilitate communication between the courts and the rnedia.

Last year the District of Massachusetts hosted its highly successful Law School for Journalists. The program, which was coordinated by the Flaschner Judicial Institute, attracted more than 50 members of the media. Plans are underway to present a similar program in Boston this fall.

A hallmark of these events has been the participation of judges, court personnel and experienced reporters who share their insights and experiences. The sessions have proven to be valuable for veteran reporters as well as for reporters who cover the courts infrequently.

INTERVIEW

Interview continued from page 1

Q: What is the role of the Executive Committee and how does it function?

A: The Executive Committee has several functions. One of its functions is to establish the calendars of the Judicial Conference, that is, the consent and discussion calendars.

Recommendations that come from the various committees are reviewed by the Executive Committee in advance of the two meetings of the Conference each year, and a decision is made as to whether a particular recommendation seems to be debate worthy or is entirely routine. If it seems to be a routine matter it is put on a consent calendar. If it seems to be a matter that might prompt discussion, it is put on the discussion calendar. This expedites the work of the Conference so that at the beginning of the meeting the Committee recommendations on the consent calendar are approved, and we then move on to the discussion calendar. However, any single member of the Conference can move an item, within a certain time frame before the meeting, from the consent calendar to the discussion calendar if he or she wishes to have it discussed on the floor of the Conference. That occurs with some frequency, so the establishment of the consent and discussion calendars by the Executive Committee, while important, is not so powerful as it might seem.

The tradition of the Conference has always been one of conducting its business in executive session, which, in my opinion, affords the best opportunity for full debate of the issues. Any member of the Conference is free to express his or her view without fear of some misunderstanding or some report that might take a comment out of context.

Secondly, the Executive Committee makes suggestions, from time to time, to the program committees of the Conference concerning developing issues that the Executive Committee thinks should be considered for the purpose of making a recommendation to the Conference.

Thirdly, the Executive Committee, under its jurisdictional statement, is empowered to act for the Conference itself between sessions when matters arise of an emergency nature and there is insufficient time to poll the Conference, or if it involves a matter as to which Conference policy is

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already established. The Chief Justice has been very careful during my time on the Executive Committee to make it clear that, in the absence of an emergency, we are not to act for the Conference where Conference policy is not clear.

Q: You've served on Judicial Conference committees since 1982, you've been a member of the Executive Committee since 1994, and its chair since 1996—certainly a history of service to the Judiciary. Why do you choose to serve, in addition to your judicial duties?

A: My committee work, while it requires an investment of time, does not involve an inordinate investment and it is one that I've always been able to manage. To me, committee service is an opportunity for both a diversion and a challenge. It's a diversion in the sense that it affords a respite from which all judges can profit. And it's a challenge in the sense that the work being considered by the Conference committees is very important work. Some vital issues come before the committees so that committee service is an opportunity to participate in the decision-making process relating to the governance of the courts.

I have never heard any judge who has served on a committee express any regret at having done so. It has been a positive experience for everyone who has served, especially because it affords the opportunity to meet and come to know other judges in the system—some of the finest and brightest people in the world. The judges I have met on Judicial Conference committees have been inspiring to me, and many have become close personal friends. I would have missed that opportunity altogether had I not been serving on committees with them. For me, the experience has been the highlight of my work as a judge.

Q: The Middle District of Florida is one of the busiest districts in the nation. What perspective did this give you as chair of the Executive Committee and when considering committee recommendations to the Judicial Conference?

A: I'm fortunate in that I come from a busy district, and we have a varied docket, both civil and criminal. Over the years I've seen just about all that one could see on the district bench. So when I look at the report of one of our committees, I'm familiar with the subject matter generally and know something about the issue. I think it has been advantageous in that respect.

Q: The Chief Justice normally presides over a Judicial Conference session, but on occasion, the chair of the Executive Committee is tapped to take over the duties. What is it like chairing the Conference?

A: It was a little daunting at first, looking forward to the prospect of presiding over the Conference, but once it happened I thoroughly enjoyed the experience. The debates of the Conference are sometimes intense but they're never rancorous, always marked by collegiality and mutual admiration and respect, so that chairing such a meeting is very easy and very exciting. It is something now that I look forward to, if the opportunity affords itself.

Q: As chairman of the Executive Committee you also have inherited the duty of briefing the press about the Conference's actions. What is this experience like? And, generally, how do you think the press and the public view the federal Judiciary?

As chair of the Executive Committee, Judge Hodges described Attorney General Janet Reno as "uniformly responsive and helpful." The Committee meets regularly with the Attorney General to discuss matters of mutual interest or concern.

A: Talking to the press is a bit of a challenge, because you have to walk a line between candor and discretion. I try to be candid with the press and answer their questions as fully and as frankly as I can. On the other hand I don't feel at liberty to disclose the views of individual members of the Conference for the reasons we've discussed: the session was conducted *in camera* and the members of the Conference have both the expectation and the right of privacy.

It hasn't been difficult for the most part. The matters decided by the Conference are often mundane in so far as the press is concerned, except for an occasional issue such as cameras in the courtroom. I just try to explain to the press what action was taken by the Conference and why it was taken—when I can clearly discern that from the overall debate.

On the second part of your question, I think the press views the federal Judiciary as an institution very much as the public does, and that is with some considerable measure of respect. Indeed, public respect for the judicial process is no doubt attributable in large part to the influence of the press and it is vital, in my view, that we conduct ourselves in a way that does not invite adverse publicity. Of course I do not mean that we should avoid hard decisions in the adjudicatory process; there are times when we simply have to take the "heat."

Q: As chair of the Executive Committee, you have had an opportunity to interact with Congress and the Attorney General on issues of interest and concern to the Judiciary. How would you assess the current relationship between the judicial branch and the legislative and executive branches?

At the Judicial Conference meeting in September 1996, Judge Wm. Terrell Hodges (third from right) posed for a photo with his fellow Executive Committee members (left to right) Judge Michael M. Mihm (C.D. Ill.), Chief Judge Richard S. Arnold (8th Cir.), Chief Judge Glenn L. Archer, Jr. (Fed. Cir.), Chief Judge Gilbert S. Merritt (6th Cir.), Chief Judge Henry A. Politz (5th Cir.), AO Director Leonidas Ralph Mecham, and Judge Clarence A. Brimmer (D. Wyo.).

A: Our relationship with the Attorney General could not have been better during my term on the Executive Committee. She has been generous with her time in agreeing to meet with the Executive Committee at least twice a year, sometimes more often. We have always had an agenda of matters of mutual interest or concern. She has been uniformly responsive and helpful. We have tried to respond in like manner with respect to her suggestions and requests concerning the obvious interests of the Department of Justice in the operation of the courts. The relationship has been excellent and I hope it continues that way in the future.

Unfortunately our relationship with the Congress, at least on the surface, is somewhat more contentious. If you listen to press accounts or to some of the congressional committee reports, they will contain criticism of the Judiciary or individual judges. But in the end, if you stop and step back and look at exactly what happened in Congress in regard to the Judiciary, we have done rather well in getting the Judiciary's point of view across. I attribute that, by the way, to the excellent work of Director Mecham and his staff in continuously working with Congress in the interests of the Judiciary. So I suppose the bottom line is that while our relationship with the Congress is somewhat testy from time to time, in the final analysis Congress has managed to provide for the Judiciary in a generally acceptable manner.

Q: You've served on the federal bench for close to 30 years. Do you have any observations on how the Judiciary has changed in that time (if it has). Are there any changes you would make or any problems that need addressing?

A: I think the greatest change I've seen in the Judiciary in the last 30 years is growth—both in terms of the number of judges, including magistrate and bankruptcy judges, and the entire supporting

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staff of the Judiciary. This growth is owing in part, of course, to the increased jurisdiction Congress has created for us during that same time period. Such growth is a matter of concern to me and to many other judges because continued enlargement of the federal Judiciary can, in my view, pose a threat to our ability to effectively carry out our very narrow and paramount function, which is, in the final analysis, to protect and defend the Constitution. If the federal Judiciary and its jurisdiction grows to the point that as an institution it becomes indistinguishable from federal administrative agencies or the state judiciary as a whole, then there is the possibility of erosion of the public confidence and respect we discussed earlier, and that could ultimately pose a threat to the ability of the federal courts to command willing public obedience to its decisions. Most judges, I think, would agree with that. Where we have disagreement is what to do about it. That's a matter of ongoing discussion. The Judicial Resources Committee recommended last year to the Executive Committee that a study be made of how we might better utilize our resources and reduce our requests for additional judgeships in the future. The Executive Committee, in turn, recommended to the Chief Justice that a working group be created to study that very issue, and the Chief Justice was kind enough to follow that recommendation and appointed a working group under the leadership of Judge Julia Gibbons, who is also the chair of the Judicial Resources Committee.

In terms of the near future, I think it is vital that the federal courts and the Congress come to grips with the necessity that the growth of the federal Judiciary be curtailed in some way.

Q: You took senior status as of May, 1999, but I notice you're still working as hard as ever. What are your plans as a senior judge?

A: I enjoy my work, as I said, both the committee work as well as sitting on the bench, and I'm going to continue to do that work as long as my health and energy remain at present levels. I'm looking forward to the future with no changes as far as my work is concerned.

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Budget Conference Expected After August Recess

With only a few weeks to spare before the new fiscal year begins, both Houses of Congress passed appropriations bills containing FY 2000 funding for the Judiciary. When the Senate and House return from August recess, they must come to an agreement on a single consolidated appropriations bill. It remains to be seen if the Judiciary will receive the funding it needs to avoid serious shortfalls in most programs, especially Courts of Appeals, District Courts, and Other Judicial Services, as described on page 2.

With the Judiciary's FY 2000 budget in limbo, the Chief Justice has written to congressional leaders in an effort to obtain necessary funds for court operations.

Chief Justice William H. Rehnquist has written to congressional leaders spelling out in strong terms the impact of inadequate funding on court operations. Referring to the Senate bill, the Chief Justice said "Such a cut in the Judiciary's budget is both unjustified and impractical." Although the House bill is more generous than the Senate version "it also would have a noticeable impact on court operations," the Chief Justice said in his August 9 letter.

"As you are aware, the courts do not control their workload, but rather must respond to filings created in large part by Congress' expansion of the federal courts' jurisdiction," the Chief Justice said. "I therefore urge you to provide necessary funding for the Judiciary for FY 2000." (A copy of the letter is available at www.uscourts.gov.)

The Senate passed S. 1217, the Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1999 late last month. As anticipated, the bill contained such tight funding for the overall Judiciary in fiscal year 2000—at $4.1 billion, just 1.9 percent over FY 99 obligations—that a serious shortfall is expected. The Judiciary had requested nearly $4.4 billion in total obligations to meet current service levels. A $206 million shortfall in the Salaries and Expenses account

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Legislative Load Will Greet Congress on Return From Recess

Although the projected October adjournment for the first session of the 106th Congress may seem far off, the clock is ticking. There is a lot to be done in this Congress, with many bills pending, and there's relatively little time left in which to do it. The House returns September 7th from recess, the Senate returns September 8th, and Congress is due to end its first session October 29—although in past years that date has been extended well into November. Speaker of the House J. Dennis Hastert (R-IL) was so concerned that work on the appropriations bills was behind schedule, he considered extending the session into the August recess, a time that members of Congress customarily dedicate to family and constituents. While pressure exists to complete appropriations bills with their fiscal year deadlines, other legislation easily may carry over into the second session of the 106th Congress starting January 2000.

The following are some of

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could result in the furlough of court employees and leaving almost all vacancies unfilled. Funds for panel attorneys likely would run out in June 2000, and $10 million in security requirements would be delayed until future years.

The House appropriations bill, H.R. 2670, gave the Judiciary $100 million above the Senate level, for a 4.4 percent increase in obligations from FY 99 to FY 2000. This was unexpected, since before consideration by the full House of the bill, the House budget was thought to be even smaller than the Senate's. Fortunately, Republican leaders agreed to fund the 2000 Census contained in the appropriations bill as an "emergency," meaning that it is outside the committee's budget allocation. This left slightly more funds for other agencies in the bill.

Even at the slightly higher funding level in the House, the Judiciary still expects a shortfall, but with less negative impact on the courts. In the Salaries and Expenses category the shortfall is not as severe as in the Senate bill, and furloughs of Judiciary employees would not be necessary. A freeze on filling most vacant positions, however, would still be likely. Funds for panel attorneys would be adequate for the coming fiscal year, but court security requirements would need to be postponed.

The Judiciary fared well in comparison with most Executive Branch agencies, whose appropriations were, with the exception of a few law enforcement agencies and embassy security, frozen at or reduced below FY 99 levels. Judge John G. Heyburn II (D. Ky), chair of the Judicial Conference Budget Committee, Administrative Office Director Leonidas Ralph Mecham, and AO staff will be working in the coming weeks to obtain higher funding levels for the Judiciary.

FY 2000 Commerce, Justice, State, and the Judiciary Appropriations Bills

(Total Obligations in Thousands of Dollars)

Courts of Appeals, District Courts & Other Judicial Services	FY 1999 Enacted	FY 2000 Requested	FY 2000 Senate Passed	FY 2000 House Passed
Salaries & Expenses	$3,196,781	$3,451,114	$3,245,448	$3,322,868
Defender Services	371,542	419,424	372,619	406,526
Fees of Jurors	63,400	63,400	63,400	65,882
Court Security	184,555	205,998	196,026	190,029
Subtotal	**3,816,278**	**4,139,936**	**3,877,493**	**3,985,305**
Other Programs	195,516	227,135	209,532	201,308
Total Judiciary	**4,011,794**	**4,367,071**	**4,087,025**	**4,186,613**

Courthouse Funding Remains in Doubt for FY 2000

The Fiscal Year 2000 Treasury, Postal Service, and General Government appropriations bill, the usual vehicle for courthouse construction funding, contains no such funds. Both the House and the Senate reports indicate that budget constraints are the main reason that courthouses are not funded. However, the Senate report also mentions the not-yet-completed review of the Judiciary's space and facilities program, and what it refers to as deviations from the *U.S. Courts Design Guide* for courthouses. In addition the House appropriations committee reduced the total amount available for GSA repair and alteration by $100 million and removed the earmarks for specific repair and alteration projects, including several projects for the courts. Crucial language extending the availability of the FY 97 appropriation for courthouse construction was included in both the House and Senate bills.

Last month, in the Judiciary's continuing effort to secure funding, Administrative Office Director Leonidas Ralph Mecham wrote to Senator Ben Nighthorse Campbell (R-CO), chair of the Senate Committee on Appropriations Subcommittee on Treasury and General Government, and to Representative Jim Kolbe (R-AZ), chair of the House Appropriations Subcommittee on Treasury, Postal Service and General Government. Mecham noted that the review of the space and facilities program was unlikely to conclude new construction was unnecessary, but rather focus on improvements to the program. He also pointed out that some deviations from the guide were actually decreases from the standards, not upgrades, and others were justified and approved by the circuits. The Judiciary also asked that the conferees on the appropriations bill restore the higher Senate level of funding for the GSA repair and alteration account and the language specifying the projects for the courts.

Congress continued from page 1

the bills and issues the Judiciary is tracking in the 106th Congress.

Y2K

H.R. 775, the Year 2000 Readiness and Responsibility Act, passed both the House and the Senate in July and was signed into law by the President as P.L. 106-37. The act is intended to address the potential flood of state and federal court litigation related to year 2000 issues, but it does so in part by expanding federal court jurisdiction over Y2K class actions. The Judicial Conference had opposed the class action provisions because, among other things, they were inconsistent with the principle that the federal courts should be preserved as tribunals of limited jurisdiction. The legislation was ultimately amended to preclude federal jurisdiction under certain circumstances where the class does not seek an award of punitive damages and the amount in controversy is less than the aggregated sum of $10 million, or there are fewer than 100 plaintiffs. A district court also may appoint a special master or a magistrate judge to hear a Y2K matter and to make findings of fact and conclusions of law.

H.R. 1752, the Federal Courts Improvement Bill

The House Judiciary Committee marked up H.R. 1752, the Federal Courts Improvement Act, before the August recess and ordered the bill reported to the full House. A House vote on the legislation won't occur until September. The House Judiciary Subcommittee on Courts and Intellectual Property held hearings in June on H.R. 1752 at which a Judicial Conference representative testified.

Several provisions were dropped in committee from H.R. 1752 as introduced. These include provisions eliminating in-state plaintiff diversity jurisdiction, authority for bankruptcy administrators in Alabama and North Carolina to appoint trustees, examiners and committee of creditors; parties' consent to a bankruptcy judge's findings and conclusions of law; and modifications to the "Rule of 80" to permit a judge with 20 years in service who has reached age 60 to take senior status.

The bill that goes to the House floor also contains two new amendments. The first amendment, offered by Representative Steve Chabot (R-OH), which allows cameras in federal courtrooms, was altered by the addition of two limiting amendments offered by Representative Melvin L. Watt (D-NC). One amendment grants to the Judicial Conference authority to establish guidelines to which individual judges may refer in making decisions regarding cameras in their courts. The amendment also requires all named parties to a suit to give consent before cameras are permitted in a courtroom.

The second amendment offered by Representatives James Sensenbrenner (R-WI) and Howard L. Berman (D-CA) dropped the provision from the bill that would allow a transferee judge in a multidistrict litigation case to retain the case for trial or transfer it to another judicial district for trial. That provision is proceeding in a separate bill, H.R. 2112.

H.R. 2112, Multidistrict, Multiparty, Multiforum Jurisdiction Act of 1999

Judge John F. Nangle, chair of the Judicial Panel on Multidistrict Litigation, testified in favor of the bill at a House hearing this year. The full House Judiciary Committee has reported favorably H.R. 2112. The first part of the bill essentially overturns the Supreme Court decision in *Lexecon Inc. v. Milberg Weiss*. The bill would allow transferee judges in multidistrict litigation cases to transfer cases referred to them for pretrial proceedings to their own or another district for trial. The bill's second part would streamline multiple litigation in federal and state courts arising from single event catastrophes, such as airline accidents, hotel fires, train wrecks, and other disasters. It would make minimal diversity of citizenship jurisdiction available to parties in litigation arising out of a single accident in which at least 25 people are killed or suffer injuries resulting in damages exceeding $75,000 per person.

H.R. 1875, Interstate Class Action Jurisdiction Act of 1999
S. 353, Class Action Fairness Act of 1999

S. 353 and H.R. 1875 would grant district courts original jurisdiction over any civil action having minimal diversity—where at least one plaintiff and one defendant are citizens of different states or nations. S. 353 specifically requires a minimum amount in controversy of more than $75,000, while H.R. 1875 would bar federal jurisdiction if the total of all aggregated claims does not exceed $1 million. Both bills would provide for certain instances in which the court must abstain from exercising jurisdiction or jurisdiction is barred. The bills also would permit removal of class actions to federal court by any defendant without consent of all defendants, or by any plaintiff class member who is not a named or representative class member, without the consent of all members of such class.

The Executive Committee of the Judicial Conference voted to express its opposition to the class action provisions in H.R. 1875 and S. 353, in

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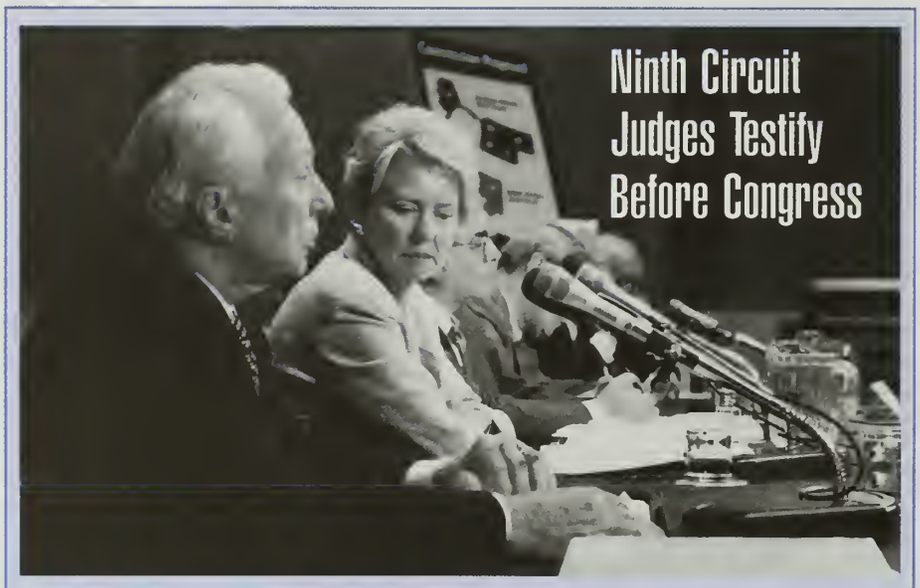
their present form. In a letter to Representative Henry J. Hyde, chair of the House Judiciary Committee, the Executive Committee noted "its serious concern about the practical effect these bills would have on the caseload of the federal courts by shifting a significant number of class actions from the state to the federal courts. Concern also was expressed about the conflict between these provisions of the bill and long-recognized principles of federalism." The committee encouraged further study of the issues raised by class action and mass tort litigation.

S. 254 and H.R. 1501, Juvenile Crime

A conference committee may begin considering S. 254 and H.R. 1501 when Congress returns in September. Some political maneuvering is possible, as Democrats put pressure on Senator Trent Lott (R-MS) either to act on the Senate bill or to move another bill with gun control measures similar to those contained in the juvenile bill. Senator Bob Smith (I-NH) has threatened a filibuster on upcoming motions necessary to move the juvenile crime bill. Smith, who opposes the Senate version of the juvenile crime bill with its gun control provisions, had previously put a hold on appointment of conferees. The Judicial Conference opposes the federalization of crimes traditionally prosecuted at the state and local levels, and has affirmed that this policy is particularly applicable to the prosecution of juveniles.

Article III Judgeships

The recommendations by the Judicial Conference for additional Article III judgeships are contained in S. 1145, the Federal Judgeship Act of 1999, creating 69 judgeships. Introduced by Senator Patrick Leahy (D-VT), the bill was referred to the Senate Judiciary Committee but no hearings have been held. The House does not have a similar bill. There are several bills in the House and Senate that create a few additional judgeships for specific districts. The Senate and House juvenile justice bills, S. 254 and H.R. 1501, contain three additional judgeships for the District of Arizona, four additional judgeships for the Middle District of Florida, and two additional judgeships for the District of Nevada. Both bills have passed their respective Houses.



Last month Congress heard the views of six federal judges on the final Report of the Commission on Structural Alternatives for the Federal Courts of Appeals and on S. 253, the Ninth Circuit Reorganization Act. Senator Charles E. Grassley (R-IA), chair of the Senate Judiciary Subcommittee on Administrative Oversight and the Courts, held a hearing on July 16 at which Chief Judge Procter Hug, Jr. (9th Cir.), and Judges Pamela Ann Rymer (9th Cir.), Andrew Kleinfeld (9th Cir.), Diarmuid O'Scannlain (9th Cir.), and Charles Wiggins (9th Cir.) testified. Rymer and Judge William D. Browning (D. Ariz.), who also joined the panel of judges at the invitation of the subcommittee, were members of the commission. Shown testifying at the hearing are, left to right, Hug and Rymer. The House also has held hearings on the commission's report and other issues concerning the Ninth Circuit.

Bankruptcy Judgeships

In the spring, the House passed H.R. 833, the Bankruptcy Reform Act of 1999, that would create 18 new temporary bankruptcy judgeships and extend temporary bankruptcy judgeships in five districts. The Senate companion bankruptcy reform bill, S. 625, was approved by the full Senate Judiciary Committee, and floor action was expected before the August recess. That now may occur in September. The Judicial Conference has recommended the creation of 24 additional bankruptcy judgeships, including the 18 judgeships that would be authorized by H.R. 833.

U.S. Sentencing Commission

Although the President announced his intention to nominate candidates to fill all seven U.S. Sentencing Commission vacancies, only four nominees have been submitted to date. They are Judge Diana E. Murphy (8th Cir.) to be chair, and Judge Sterling R. Johnson (E.D.N.Y.), Judge Ruben Castillo (N.D.Ill.), and Judge William K. Session III (D.Vt.). No confirmation hearings have yet been scheduled. The Commission has not had any commissioners since October 1998.

JMS Streamlines Jury Processes in District Courts

Nearly 359,000 jurors were called for jury duty in the district courts last year. For many, this was the first contact they had with the federal judicial system. Now, thanks to the new automated Jury Management System (JMS), potential jurors can be certain courts are making the best use of their participation.

JMS is software that lets courts integrate the various aspects of jury management, such as printing and scanning qualification questionnaires, printing summonses, and reporting on juror use. Although the new system does not create the master jury wheels, for the first time it brings in-house all the other jury management tasks that many courts had previously contracted out or done manually. Labor-saving features include the automated random selection of jurors and a bar coding system for more efficiently taking juror attendance and tracking juror status. It also allows courts to produce high-quality statistical information and eliminate redundant data entry. JMS even speeds voir dire, because it can produce automatically something as simple, but time-consuming, as a seating chart. Interfaced with the court's financial system, JMS makes the calculations necessary to pay jurors on time, a function that also benefits the courts. Deputy clerks who might have spent several days per month processing juror payments, can reduce the time involved to only four to five hours. In the end, JMS automates many of the manual processes, which leaves court personnel available to answer questions and help—making the juror experience a less confusing, less intimidating experience.

Judge John W. Lungstrum in the District of Kansas has used the JMS software for both a large nine-week trial in which five to six dozen jurors were called, and also in small trials. He has been favorably impressed with the system. "It certainly moves the process along more quickly than the manual operation, " said Lungstrum. "And while I miss the custom of drawing a juror's name from the wheel, the JMS expedites the process, especially for the clerks."

Bill Holland, supervisor for in-court activities in the District Court for the District of New Jersey, agrees that JMS eliminates some chores. The introduction of JMS has meant that the District of New Jersey will no longer out-source the scanning of questionnaires. Although the court is still in what Holland calls an "adjustment phase" with JMS, he says the system is user-friendly. "We'll rely on it to do a lot of the documentation involved in the voir dire process, such as judges' randomized lists and seating charts, and to produce reports on jury composition we couldn't do before. It seems like an adaptable system, and we hope it will help us streamline our jury management."

According to Bob Lowney, chief of the Administrative Office District Court Administration Division, implementation of the new system will be completed for all courts by December 2001. Currently, 14 district courts, including several large districts such as the Eastern District of New York and the District of New Jersey, are using the software.

The JMS installation also will be an opportunity for a review of jury practices in the courts, to identify courts practicing good jury utilization, and train those that may need to improve practices.

Party/Case Index Recognized by NACM

The Judiciary's U.S. Party/Case Index for district, bankruptcy, and appellate courts has received an honorable mention in the Justice Achievement Award program established by the National Association for Court Management. The award program recognizes courts and related organizations for meritorious projects and exemplary accomplishments that enhance the administration of justice. The U.S. Party/Case Index competed against 25 entries. One winner and three honorable mentions were selected.

The U.S. Party/Case Index allows searches to determine whether or not a party is involved in federal litigation almost anywhere in the nation. National or regional searches are possible on party name and social security number in the bankruptcy index, party name and nature of suit in the civil index, and party name in the criminal and appellate indices. The search will provide a list of case numbers, filing locations, and filing dates for those cases matching the search criteria. The U.S. Party/Case Index is accessed presently by dial-up connection, and soon will be available on the Internet.

To be considered for a Justice Achievement Award, applicants must, among other criteria, demonstrate that the project was a more efficient and more effective way of solving the identified problem, and how the program meets identified needs or improves the delivery of services.

An Overwhelming Caseload Tests Florida Court

By August 1997, the Tampa and Fort Myers divisions of the Middle District of Florida faced what seemed to be an insurmountable caseload. Approximately 3,000 civil cases were pending, and the backlog was projected to hit 4,400 by summer 1998. The Middle District of Florida ranks near the top in the country for weighted caseload, and there were many complex cases in the mix that would take time to settle or go to trial. Meanwhile the district court anticipated a shortage of judges, with two of the 11 judges eligible for senior status in 1999. Visiting judges were helping, but couldn't make the time commitment needed to clear the docket. The Judicial Conference had recommended five new judgeships for the Middle District of Florida, but Congress has authorized no new judgeships since 1990. The future only promised more cases and fewer resources on the bench.

The board of judges, through Chief Judge Elizabeth A. Kovachevich, knew action was needed and began by targeting the summer months of 1998 as the best time to schedule an all-out attack on the pending caseload. The local bar was notified that beginning June 1, 1998, the Middle District of Florida would be on an Accelerated Trial Calendar (ATC).

"Necessity drove the ATC," said Kovachevich. "We were looking at a pending caseload of nearly 3,000 cases that would only worsen if we did nothing. Our goal was to reduce the overall number of civil cases in the Tampa and Fort Myers divisions, and to target the oldest pending civil cases for disposition."

The nine-month period between September 1997 and the beginning of the trial phase on June 1, 1998, was one of intense preparation. Approximately 850 cases were designated to the ATC. The district's 12 magistrate judges handled dispositive motions and related pretrial matters. Nearly 250 cases on the ATC contained summary judgment motions that had to be decided to ready the cases for trial. The district's four senior judges, with the voluntary services of senior and active judges from the Northern and Southern Districts of Florida, were enlisted to handle the criminal dockets during the planned trial months of June, July, and August. This cleared the way for the six district judges in Orlando and Jacksonville to relocate temporarily to Tampa to handle the master trial docket. A master trial calendar was announced.

"As successful as the ATC was, it also highlighted our inability to maintain the pace necessary to handle the high caseload in the Middle District of Florida."

Chief Judge Elizabeth A. Kovachevich

On the night before the ATC began, the Tampa Bay Federal Bar Association hosted a reception for local bar members and all the district's federal judges. Any remaining doubts attorneys may have entertained concerning the court's intent or ability to begin trials the next day were erased. "By June 1," said Kovachevich, " we had 11 judges in 11 courtrooms, all starting cases, all selecting juries. It was a distinct advantage having courtroom space."

The courtrooms were available because the new Sam M. Gibbons Courthouse was partially open that summer in the Middle District of Florida and available to house the Orlando and Jacksonville judges, while the Tampa judges remained in the old courthouse one block away. The new facilities needed furniture, telephones, office equipment, even a sound system, and court staff found themselves giving audio and security systems orientations the night before the trials were to begin.

In all, 75 of the cases designated for the ATC resulted in trials. Mediation was used as much as possible, and many cases settled. For example, the court had estimated that a trial of 20 tobacco cases would take up to four weeks—but there were delays getting even the first case to trial. With the advent of the ATC, all those cases settled short of trial. "The court was committed to the ATC's firm trial dates," Kovachevich explained. "To the extent that the Bar perceives a trial date to be realistic, earlier settlements tend to occur."

The civil case clearance rate, or ratio of terminations to filings, increased to nearly 105 percent during the ATC period, the highest clearance rate experienced during the preceding four-year period. While other factors were involved, the ATC contributed to reducing the pending civil case backlog during the fiscal year 1998 by about 300 cases. Furthermore, the concentration of resources on the Tampa and Fort Myers workload did not appear to have a negative effect on the productivity in the district's other divisions.

"As successful as the ATC was," said Kovachevich, "it also high-

See ATC on next page

September 1999 Program Calendar for The Federal Judicial Television Network

All times are Eastern Daylight Time

Assessment of Sex Offenders for Sentencing, Supervision, and Treatment
Sept. 15, 9:00 a.m.; 2:00 p.m.

Bankruptcy Organization and Jurisdiction
Sept. 8, 9:00, 10:00, 11:00 a.m.; 12:00, 4:00 p.m.; Sept. 15, 12:00, 1:00 p.m.; Sept. 16, 9:00, 10:00, 11:00 a.m.; Sept. 24, 11:00 a.m.; 12:00, 1:00 p.m.

Basic Browser Usage
Advance registration required for Push-To-Talk (Aug. 2 only)
Sept. 3, 12:00 p.m.; Sept. 27, 9:00 a.m.

Business Communication: Diversity (PBS)
Advance registration required
Sept. 16, 2:55 p.m.

Civil Service Retirement System
Sept. 3, 8:30 a.m.; Sept. 20, 12:30 p.m.; Sept. 28, 1:00 p.m.

Court Personnel System (court employees)
Sept. 7, 8:30 a.m.; Sept. 20, 2:00 p.m.

Court Personnel System (judges)
Sept. 7, 9:00 a.m.

Courtroom Technologies
Sept. 3, 4:30 p.m.; Sept. 17, 10:00 a.m.; Sept. 28, 2:30 p.m.

Executive Briefing: Travel Regulations
Sept. 13, 2:00 p.m.; Sept. 14, 11:00 a.m.; Sept. 17, 9:30 a.m.; Sept. 21, 8:30 a.m.

Federal Employees Retirement System (FERS)
Sept. 3, 10:00 a.m.

FJTN From Where You Sit
Advance registration required for Push-To-Talk
Sept. 2, 12:00 p.m. LIVE

FJTN News Update
Aired throughout the FJTN broadcast day, appearing either before or after a program.

Furniture and Furnishings Acquisition
Sept. 7, 9:30 a.m.; Sept. 17, 3:30 p.m.

In Camera
Every Monday (except Sept. 6) at 8:30 a.m.; Every Tuesday at 4:30 p.m.

Introduction to Case Management and Electronic Case Filing
Advance registration required for Push-To-Talk (Aug. 17 only)
Sept. 7, 11:00 a.m.; Sept. 13, 2:30 p.m.; Sept. 20, 11:00 a.m.; Sept. 21, 2:00 p.m.; Sept. 27, 3:30 p.m.

Introduction to NCIC 2000
Sept. 14, 8:30 a.m.

Judiciary Benefits Initiative: Is Long-Term Care for Me?
Advance registration required for Push-To-Talk (Sept. 21 only)
Sept. 21, 1:00 p.m. LIVE; Sept. 27, 1:30 p.m.; Sept. 28, 12:00 p.m.

Judiciary Benefits Initiative: Long-Term Care—Open Season
Sept. 7, 12:30 p.m.; Sept. 14, 11:30 a.m.; Sept. 20, 10:00 a.m.

Managing Generation X
Sept. 2, 8:30 a.m.

Negotiating Skills
Advance registration required for Push-To-Talk
Part One: Sept. 1, 1:30 p.m. LIVE
Part Two: Sept. 8, 1:30 p.m. LIVE

Neurobiology of Addiction
Sept. 1, 10:30 a.m.; Sept. 22, 8:30, 10:30 a.m.; 12:30, 2:30 p.m.

New Federal Court Reporter Orientation
Advance registration required for Push-To-Talk (Sept. 14 only)
Sept. 14, 1:00 p.m. LIVE; Sept. 28, 3:00 p.m.

Orientation Seminar for Federal Judicial Law Clerks
Part One: Sept. 9, 9:00, 10:00, 11:00 a.m.; 12:00, 1:00, 2:00, 3:00, 4:00 p.m.; Sept. 29, 9:00, 10:00, 11:00 a.m.; 12:00, 1:00, 2:00, 3:00, 4:00 p.m.
Part Two: Sept. 10, 8:30, 11:00 a.m.; 1:30, 3:30 p.m.; Sept. 30, 8:30, 10:30 a.m.; 12:30, 2:30 p.m.
Parts One & Two: Sept. 23, 8:30, 11:15 a.m.; 2:00 p.m.

Pedophiles Who Use the Internet
Sept. 1, 8:30 a.m.

Pharmacology of Drugs of Abuse
Sept. 1, 12:00 p.m.

Pretrial Services Investigations and Reports Training
Sept. 13, 9:00 a.m.; Sept. 14, 2:30 p.m.; Sept. 20, 2:30 p.m.

Restitution: Determining Victims and Harm
Sept. 2, 10:00 a.m.

Security for Judiciary Computer Users
Sept. 13, 4:00 p.m.; Sept. 17, 8:30 a.m.

Supreme Court 1998-99: The Term in Review, Parts One, Two, and Three
Sept. 16, 12:00 p.m.; Sept. 24, 8:30 a.m.; 2:30 p.m.

Web-Based Knowledge Management
Sept. 7, 1:30 p.m.; Sept. 20, 9:00 a.m.; Sept. 21, 9:00 a.m.; Sept. 27, 2:30 p.m.

WordPerfect 6.1 to 8.0 Transition
Sept. 7, 2:30 p.m.

WordPerfect 8.0 Basics (formerly Basic WordPerfect)
Sept. 3, 2:30 p.m.; Sept. 27, 11:30 a.m.

WordPerfect Document Formatting
Sept. 13, 11:30 a.m.; Sept. 28, 8:30 a.m.

WordPerfect File Management
Sept. 17, 11:00 a.m.; Sept. 28, 10:00 a.m.

WordPerfect QuickFamily
Sept. 13, 1:00 p.m.; Sept. 21, 3:30 p.m.

WordPerfect Templates
Sept. 17, 1:30 p.m.; Sept. 21, 10:30 a.m.

CALENDAR DATES FOR
THE THIRD BRANCH

Vol. 31 Number 8 August 1999

SEPTEMBER

8-10 **Wednesday-Friday**
National Workshop for District Judges III

15-16 **Wednesday-Thursday**
Judicial Conference of the United States

27-28 **Monday-Tuesday**
Advisory Committee on Bankruptcy Rules

OCTOBER

4-6 **Monday-Wednesday**
Seminar for Court of Appeals Judges

11-13 **Monday-Wednesday**
First Circuit Conference

17-19 **Sunday-Tuesday**
Third Circuit Conference

20-22 **Wednesday-Friday**
Tenth Circuit Conference

25-29 **Monday-Friday**
Phase II Orientation for New Magistrate Judges

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH

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CLERK OF COURT, District of Maryland, Baltimore

The District Court of the District of Maryland seeks applicants for the position of Clerk of Court. Applicants must have an undergraduate degree and a minimum of 10 years of management experience of increasing responsibility in the private or public sector. A graduate degree in business, law, or public or judicial administration is advantageous but not essential. Substantial experience in personnel and budget management, including the use of automation and technology systems, is required. Experience in court operations and judicial administration is highly desirable but not mandatory. Salary JSP 17-18: $108,642-$119,412. An original and five copies of a resume, cover letter, list of references, and writing sample must be submitted to the Clerk of Court Search Committee, c/o Betsy Michael, U.S. District Court for the District of Maryland, 4415 U.S. Courthouse, 101 West Lombard Street, Baltimore, MD 21201. **Application deadline: September 1, 1999.**

EXECUTIVE DIRECTOR, Community Defender Organization, Middle District of Alabama, Montgomery

The Middle District of Alabama Federal Defender Program, Inc., is accepting applications for the position of Executive Director. The Executive Director will be responsible for the staffing, organization, and management of the office, and for setting up and coordinating training for attorneys. The Executive Director will carry a substantial caseload, representing indigent federal defendants in trial, on appeal, and in other proceedings. An applicant should be a member in good standing in the bar of the state in which the applicant is admitted to practice, have at least five years of criminal practice experience with significant experience in federal criminal trials and appeals, have the ability to effectively administer the office, have a reputation for integrity, and be committed to the representation of those unable to afford counsel. Salary: not to exceed the salary of the U.S. Attorney for the Middle District, currently $118,400. Application materials may be obtained from William R. Blanchard, President, Middle District of Alabama Federal Defender Program, Inc., P.O. Box 746, Montgomery, Alabama 36101-0746. **Application deadline: September 1, 1999.**

BANKRUPTCY JUDGESHIP, District of Arizona, Phoenix

The U.S. Court for the Ninth Circuit is recruiting to fill a vacancy on the Bankruptcy Court for the District of Arizona. Service will commence in March 2000. Qualifications include admission to practice, good standing bar membership, and at least 5 years of legal practice. Appointment is for 14 years, subject to possible reappointment. Salary: $125,764. Vacancy announcement and application forms are available via court website at www.ce9uscourts.gov, or at court clerks' offices in the Ninth Circuit, or by calling, faxing, or writing: (415) 556-6158; Fax: (415) 556-6179; U.S. Courts for the Ninth Circuit, Office of the Circuit Executive, P.O. Box 193939, San Francisco, CA 94119-3939, Attn: Bankruptcy Recruitment-Arizona. **Application deadline: August 30, 1999.**

CHIEF PROBATION OFFICER, District of Massachusetts, Boston

The District Court for the District of Massachusetts, seeks applicants for the position of Chief Probation Officer. The position is located in Boston with divisional offices in Lawrence, Plymouth, Springfield, and Worcester, Massachusetts. Grade 14-17. Send letter of application and resume to Tony Anastas, Clerk of Court, U.S. District Court, U.S. Courthouse, 1 Courthouse Way, Suite 2300, Boston, MA 02210, ATTN: CPO 99-1. **Application deadline: September 1, 1999.**

AO Staff Measure the Needs of the Courts

How many people does it take to run the federal Judiciary? What's the formula for a properly staffed court? The Judiciary has told Congress that courts are staffed well below the recommended staffing levels. What does that mean? In the Administrative Office, staffing requirements and analysis are handled by a team of specialists led by Beverly Bone. This group's specialty is work measurement, and its job is to answer these and related questions. The group's members develop the formulas that determine the number of people a court unit needs to process the workload.

From left: Terry Kinney and Beverly Bone, members of the AO's work measurement staff, gather data on the 6th Circuit in Cincinnati, Ohio.

Work measurement, like time studies or stop watch studies, has been used since the industrial revolution when managers wanted to know how long a task should take, and how many workers it took to do it. The Judiciary adopted the methodology slightly more than 20 years ago. "We prefer a statistical method of work measurement known as operational audit," Bone explains, "because it has proved to be the most accurate for the Judiciary." Bone and her AO team, with members of court working groups, first develop a work center description, which is a detailed list of all the tasks performed in an office. "Then using the description, we interview the people actually doing the work," said Bone. "We ask how long it takes them to complete a task, and how often they perform the task. People's estimates of their own work is surprisingly accurate."

The list and the interview information are consolidated. Databases are constructed, potential workload factors are analyzed, and historical workload is considered. From all this data, a staffing formula emerges for each court unit. The formulas are often complex with many different elements. Elements for districts can be the relationship between court hours and civil filings; the number of criminal defendants; and the number of judges available to a court. The increased staffing needs of courts with divisions have to be taken into consideration.

Last summer the Judicial Conference Committee on Judicial Resources approved a recommendation to review and revise all staffing formulas for court support offices. AO work measurement teams have headed out to circuit, district, bankruptcy, and probation and pretrial services offices across the country to begin the new project. Some of the formulas are at least six years old and fail to reflect either new legislation or the introduction of new technology to the courts.

See ***Measure*** *on page 9*

ATC continued from previous page

lighted our inability to maintain the pace necessary to handle the high caseload in the Middle District of Florida. The ATC required increased resources, in terms of judges, staff, and finances, than normally are available to the district. As weighted case filings continue to remain at levels that are more than 55 percent higher than the national average, it is apparent that the judicial and non-judicial resources currently available to us will not be able to reduce the backlog of civil cases, nor keep the backlog from growing larger over time."

For the future, both of Florida's Senators and the Representatives from the Middle District of Florida introduced identical legislation supporting four additional district judges for the district. This legislation was included as provisions in the House and Senate Juvenile Justice bills, both of which passed in their respective houses, and await the action of a conference committee when Congress returns from its August recess.

JUDICIAL MILESTONES

Appointed: William J. Hibbler, as U.S. District Judge, U.S. District Court for the Northern District of Illinois, July 2.

Appointed: Matthew F. Kennelly, as U.S. District Judge, U.S. District Court for the Northern District of Illinois, June 22.

Appointed: G. Mallon Faircloth, as U.S. Magistrate Judge, U.S. District Court for the Middle District of Georgia, July 1.

Appointed: Karen L. Marty, as U.S. Magistrate Judge, U.S. District Court for the District of Wyoming, July 1.

Elevated: Judge William F. Downes, to Chief Judge, U.S. District Court for the District of Wyoming, succeeding Alan B. Johnson, July 12.

Elevated: Judge David A. Ezra, to Chief Judge, U.S. District Court for the District of Hawaii, succeeding Alan C. Kay, November 30.

Elevated: Bankruptcy Judge William C. Hillman, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the District of Massachusetts, succeeding Carol J. Kenner, December 10.

Elevated: Bankruptcy Judge Terrence L. Michael, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Oklahoma, succeeding Dana L. Rasure, June 2.

Retired: Chief Bankruptcy Judge Martin V. B. Bostetter, Jr., U.S. Bankruptcy Court for the Eastern District of Virginia, June 30.

Retired: Bankruptcy Judge Henry H. Dickinson, U.S. Bankruptcy Court for the Western District of Kentucky, July 15.

Retired: Magistrate Judge Lawrence A. Marty, U.S. District Court for the District of Wyoming, June 30.

Retired: Magistrate Judge David Shepard Perelman, U.S. District Court for the Northern District of Ohio, July 12.

Retired: Magistrate Judge John Y. Powers, U.S. District Court for the Eastern District of Tennessee, July 29.

Retired: Magistrate Judge John Thomas Reid, U.S. District Court for the District of Kansas, June 30.

Retired: Magistrate Judge William Leon Slaughter, U.S. District Court for the Middle District of Georgia, June 30.

Resigned: Magistrate Judge Patricia A. Collins, U. S. District Court for the District of Alaska, April 30.

Deceased: Senior Judge Oliver Gasch, U.S. District Court for the District of Columbia, July 9.

Deceased: Senior Court of Appeals Judge Kenneth K. Hall, U.S. Court of Appeals for the Fourth Circuit, July 8.

Deceased: Senior Judge Herbert F. Murray, U.S. District Court for the District of Maryland, July 12.

Deceased: Senior Judge Louis Rosenberg, U.S. District Court for the Western District of Pennsylvania, July 2.

Deceased: Magistrate Judge Robin D. Pierce, U.S. District Court for the Northern District of Indiana, July 5.

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JUDICIAL BOXSCORE

As of August 1, 1999

Courts of Appeals	
Vacancies	23
Nominees	14
District Courts	
Vacancies	41
Nominees	27
Court of International Trade	
Vacancies	1
Nominees	0
Courts with "Judicial Emergencies"	21

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Conflicts Screening Software Testing Underway in District, Bankruptcy Courts

Computer software that will help judges screen for conflicts of interests currently is being tested in three district and three bankruptcy courts. Developed from a program originated by the District of Maine, the software compares recusal lists prepared by participating judges to the court's docket. The screening is designed to be run every evening to check new docket entries, while a check of the entire docket runs every weekend. When a match is identified, indicating a potential conflict of interest, notification is sent by electronic mail to the judge and/or the clerk's office. Under the Codes of Conduct for U.S. Judges, judges must disqualify themselves from matters in which they have a financial interest.

Enhancements to the original program permit the programs to screen for conflicts involving attorneys and law firms. The software also can generate a periodic notice to participating judges, reminding them to update their recusal lists.

"Although no single mechanism can identify all potential conflicts of interest," said Judge Carol Bagley Amon, chair of the Committee on the Codes of Conduct, "the Committee believes it is essential for judges to use these and other available tools to assist in the effort."

Close to 20 district courts have some type of automated conflicts checking program similar to or based on the District of Maine program. The enhanced conflicts screening software now being tested is intended to be used by courts nationwide and adaptable to the differing needs and preferences of individual courts.

If the testing phase is successful, the new software will be released to all courts in September, and judges and clerks of court will be encouraged to implement it in their courts.

"We feel the conflicts screening software can be a useful tool," said Administrative Office Director Leonidas Ralph Mecham. "AO staff developed the final software product to assist judges and ease a difficult and time-consuming process." In line with those efforts, the AO will supply national support for the software, along with a special informational website.

Measure continued from page 7

In the districts, study teams composed of a court unit representative and a member of the AO's work measurement staff will visit 25 of the 94 courts. Courts are randomly sampled to get different geographical areas, courts with and without divisions, courts with different technology, and courts with diverse case mixes. All courts of appeals and circuit level offices will be visited.

Court representatives are drawn from the appellate, district, bankruptcy, and probation and pretrial services work groups that developed and revised the work center descriptions. "When we visit the sites, members of the work group come along to conduct the interviews," said Bone. "They not only created the work description, they typically also have done the work in their own courts, so they know what questions to ask."

As of mid-July, five of the 12 circuits had been visited, as had 13 of 25 randomly selected district courts, 19 of the probation and pretrial services offices, and 17 of the bankruptcy courts. By mid-November, Bone hopes to have completed the data collection and to begin the analysis stage. Advice and comments will be sought from court advisory groups.

New staffing formulas will be presented to the Judicial Conference Committee on Judicial Resources and other committees at their June 2000 meeting and then to the Conference in September. The approved formulas will be used for staffing allocation in fiscal year 2001. "The work measurement formulas provide statistically reliable tools and a sound methodology for quantitatively expressing the staffing needs of the courts," said Chief Judge Julia Smith Gibbons (W. D. Tenn.), chair of the Judicial Resources Committee. "Use of the formulas reflects the Judiciary's commitment to requesting only those resources required to fulfill our core mission of handling cases in a just, timely, and efficient manner. We want to know as precisely as possible what staff is necessary for the delivery of appropriate service to litigants, witnesses, jurors, attorneys, and the public so that we can staff at an adequate, but not excessive, level."

"Currently, the courts are functioning at what we know to be well below their recommended staffing," said Bone, "which often means putting some projects or work on the back burner. Automating some processes helps, but it is not the total solution. We need better staffing measurements to give Congress. We need to measure and present the data for the best possible formulas."

An Interview with Magistrate Judge Joel B. Rosen

Magistrate Judge Joel B. Rosen is the immediate past president of the Federal Magistrate Judges Association. He was appointed a magistrate judge in the U.S. District Court for the District of New Jersey in 1987. He is a member of the Judicial Conference Committee on Federal-State Jurisdiction, as well as a member of the Magistrate Judges Education Committee of the Federal Judicial Center.

Q: You testified recently before Congress on provisions of H.R. 1752, the Federal Courts Improvement Act of 1999. How would provisions in this bill affect magistrate judges?

A: There are three components of H.R. 1752 of particular interest to magistrate judges. Section 305 of the bill would give magistrate judges limited contempt authority in both civil and criminal cases. Currently, magistrate judges have no way of dealing with misbehavior in the courtroom. Additionally, in those cases where the parties have consented to the magistrate judge hearing the case, we have no authority to enforce our orders. These provisions would vest magistrate judges with limited authority to deal with these problems, subject to the Federal Rules of Civil and Criminal Procedure and appropriate appellate review.

Section 306 of the bill would eliminate the consent requirement for all petty offenses. Magistrate judges already have that authority in regard to most petty offenses, including all motor vehicle offenses. Other offenses require a party to consent, which may lead to a situation where a magistrate judge hears one part of the case and an Article III judge hears another. For example, a party may be charged with drunk driving on a military reservation and trespassing. The magistrate judge can hear the drunk driving case but unless the party consents, an Article III judge will have to hear the trespassing charge.

I also testified in support of a provision of the legislation concerning juvenile matters. If the bill passes, magistrate judges could hear cases involving juveniles with the same authority as they hear any other criminal matter. I would add that all of these provisions have been approved by the Judicial Conference of the United States. Two years ago, the House passed these provisions but they did not make their way through the Senate.

Q: What are some of the concerns and issues of the Federal Magistrate Judges Association?

A: The Federal Magistrate Judges Association has weighed in on various initiatives of concern to the entire Judiciary. We have been very active working with the Federal Judges Association, as well as with various committees of the Judicial Conference on the issue of compensation. We are determined to see some long-term solution to this serious problem. We think that this is an issue of good public policy that should be resolved not only for the Judiciary but for members of the Executive and Legislative Branches as well.

We also have supported legislation approved by the Judicial Conference concerning case management and other matters that we believe make the courts more efficient. We also express our views on proposed changes to the federal rules of civil and criminal procedure. We feel that magistrate judges, because of the type of work we do, can make valuable contributions to the rule-making process.

Magistrate Judge Joel B. Rosen (D. N.J.)

Q: Generally, how are magistrate judges being utilized in district courts nationwide? Are there any particularly effective ways magistrate judges are utilized in the district courts?

A: One of the best aspects of the magistrate judges system is the fact that magistrate judge utilization can be tailored to the needs of a particular court and the legal culture where that court sits. Magistrate judges are used in many different ways. In certain parts of the country, they are involved in case management, settlement, mediation, and dispositive motion practice. In certain districts, magistrate judges are on the "wheel" for direct assignment of civil cases to dispose of with the consent of the parties. Yet in other districts, magistrate judges are heavily involved in the disposition of social security and prisoner matters. All of these ways of utilizing magistrate judges depend on the needs of the particular district. What works, for example, in New Jersey, may or

may not work in California. It is good to have that flexibility. Magistrate judges are highly qualified, experienced judicial officers who can contribute to the efficient functioning of the district court. From my own experience and knowing my colleagues around the country, magistrate judges are fine, talented men and women who rise to the challenge of anything that we're asked to do by the court. We view ourselves as judicial officers working in a way that best serves the court and the public.

The volume of judicial matters handled by magistrate judges suggests that many courts are using this resource to help move their dockets. According to AO statistics, in 1998 magistrate judges performed over 612,000 judicial duties including 69,500 civil motions, 23,000 settlement conferences, and 40,000 other conferences. On the criminal side, magistrate judges performed over 53,000 felony pretrial duties, including 24,000 motions and almost 2,000 evidentiary hearings. They disposed of over 96,000 misdemeanor matters. Additionally, magistrate judges terminated over 10,000 civil cases with the parties consent. These numbers suggest how magistrate judges, when fully utilized, can be of great assistance to the court and the litigants whom we all serve.

Q: In your experience, is the magistrate judges system functioning the way it was intended? Do you see the duties of magistrate judges evolving or expanding?

A: Frankly, I believe that the magistrate judges system is functioning better than was expected. I think it is a part of government that has worked exceptionally well in terms of the quality and quantity of the work we do. Magistrate judges' duties have evolved and changed in large part as a function of the changing volume and contours of work in the district courts. I am confident that magistrate judges will continue to make a substantial contribution to the work of the federal Judiciary in the years to come.

Q: It seems that an increasing number of magistrate judges have become district judges. What does this say about the magistrate judges system?

A: Seventy-three magistrate judges have become Article III judges since the beginning of the current magistrate judges system 30 years ago, including 47 in the last 10 years alone. I believe that this speaks well not only about the quality and backgrounds of the men and women who are selected as magistrate judges, but also of the selection panels who recommend us and the courts who appoint us. Magistrate judges have a depth of experience and training that makes them well-suited for Article III positions. We also see more and more state judges—both trial judges and appellate court judges—who have become magistrate judges. It's a very interesting phenomena. The diversity of experience is rather remarkable, including attorneys from civil and criminal practice, assistant U.S. attorneys, federal defenders, and former academics.

Q: Has magistrate judges' involvement in the policy-making or administrative aspects of the district courts changed over the years? Are they also involved in court governance activities at the national or circuit levels?

A: Magistrate judges' involvement in policy-making and administration has indeed changed over the years, particularly I would note, with Chief Justice Rehnquist's support in placing magistrate judges on approximately 14 Judicial Conference committees. The Chief Justice together with Administrative Office Director Leonidas Ralph Mecham have been strong supporters of magistrate judge involvement in court governance and administration. Throughout the country, magistrate judges now serve on many committees at the district court level and on circuit judicial councils, although at this time as non-voting members. A magistrate judge is a member of the board of the Federal Judicial Center. We are very pleased at the increased opportunities to participate in court governance.

Q: It has been nine years since Congress last created new Article III judgeships. How has the workload of magistrate judges been impacted by this?

A: As a result of the lack of new Article III judgeships, all judicial officers have been asked to do, and are doing, more. There is no question this is an issue that should be addressed by Congress soon, especially if there is going to be a continuing increase in the workload of the federal courts.

Q: How are recalled or retired magistrate judges being incorporated into the system? What is their contribution?

A: Based on the workload of a district, a court may request that a magistrate judge, who may be ready to retire, stay on, on a year-to-year basis. We have had several instances where magistrate judges, who have retired in one district, have been recalled to serve in another district that needs assistance. It's a way of getting experienced judicial officers to continue to contribute where they are needed. As of now, there are 21 recalled magistrate judges serving the courts.

Judge Frank M. Johnson, Jr.

1918-1999

In his 44-year tenure on the federal bench, Judge Frank M. Johnson Jr. (11th Cir.) was vilified by politicians, called the "most hated man in Alabama" by the Ku Klux Klan, and received so many death threats he and his family were under constant federal protection from 1961 to 1975. However, his rulings on school desegregation, voting rights, access to public facilities and other civil rights questions, helped change the social and political fabric of the country. When he died last month, the Senate introduced and agreed to Resolution 165, which states in part:

"Whereas in a time when men of lesser fortitude would have avoided direct confrontation of the highly unpopular issues of school desegregation and voting rights for African-Americans, Judge Johnson stood firm in upholding the Constitution and the law; . . . .

"Whereas in part because of Judge Johnson's upholding of the law, attitudes that were once intolerant and extreme have dissipated; . . .

"Whereas the American people will always remember Judge Frank M. Johnson, Jr. for exemplifying unwavering moral courage in the advancement of the wholly American ideal that 'all men are created equal' and deserve 'equal protection of the laws' and for upholding the law; . . .

The Senate hereby honors the memory of Judge Frank M. Johnson Jr. for his exemplary service to his country and for his outstanding example of moral courage."

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THE THIRD BRANCH

Newsletter of the Federal Courts

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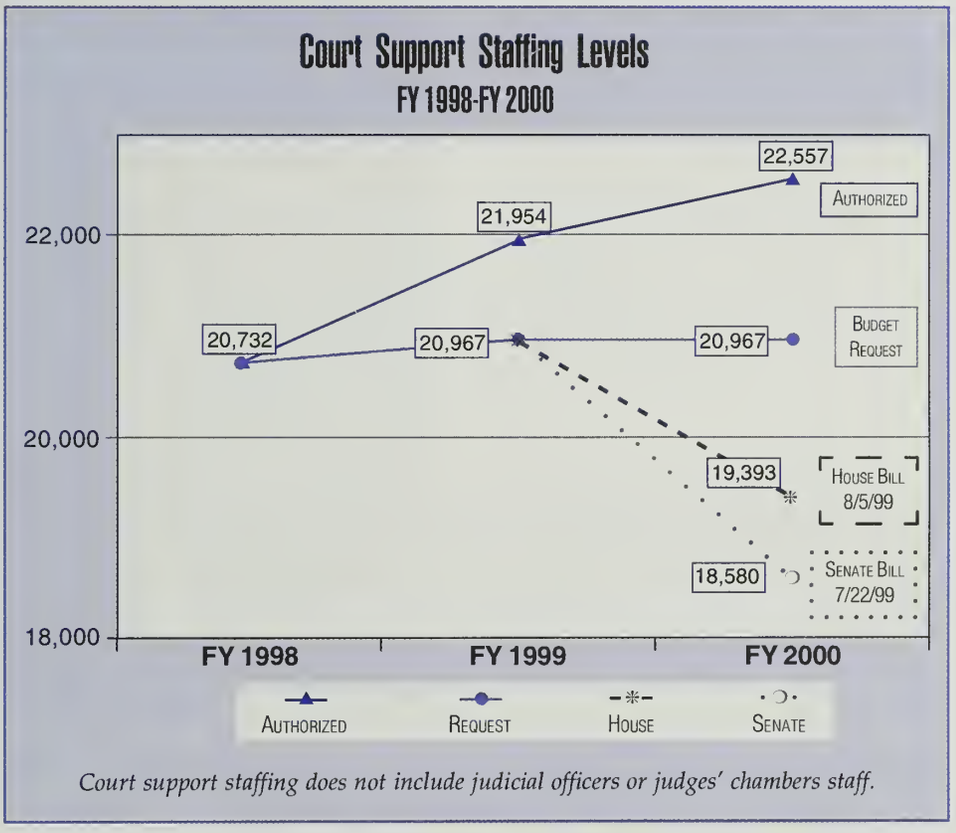
Judiciary Appeals to Congressional Budget Conferees

A letter from Judge John G. Heyburn (W. D. Ky), chair of the Judicial Conference Budget Committee, and Administrative Office Director Leonidas Ralph Mecham was waiting for House and Senate conferees on the Judiciary's appropriations bill when they returned from their August recess. The letter warned members of the serious impact both the House and Senate versions of the Commerce, Justice, State, and the Judiciary appropriations bill will have on the Judiciary's ability to provide services to the public. This follows an unprecedented letter last month from Chief Justice William H. Rehnquist to congressional leaders. The Chief Justice's letter urged Congress to provide necessary funding for the Judiciary for fiscal year 2000, calling the Senate's cut in the Judiciary's budget "unjustified and impractical" and noting that even the House's higher funding level would have a "noticeable adverse impact on court operations."

In their letter, Heyburn and Mecham asked conferees for a funding level higher than what was provided in either the House or Senate bill. "Given our current services budget request," they wrote, "and our increased uncontrollable workload, doing otherwise would be irresponsible to the courts and to this nation."

In its FY 2000 budget, the Judiciary requested a current services budget for the courts with staffing at the FY 99 levels and increases only for inflation and other uncontrollable requirements. In March, at a hearing before the House Appropriations Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, Heyburn warned that the federal Judiciary's FY 2000 budget request was already "bare bones," despite a significant growth in workload. No new initiatives,

See ***Appeal*** *on page 2*



Court support staffing does not include judicial officers or judges' chambers staff.

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programs, or court support staff were requested for FY 2000—the second year the Judiciary will have experienced a freeze in staffing. However, the current House and Senate funding levels cut below the requested current services budget, and will result in reductions to funded staffing levels of between 8 and 11 percent below FY 99. The result, conferees were told, is that, "Both the House and Senate funding levels will likely prohibit the filling of virtually all vacant court support positions, and the lower Senate level will also likely result in a 10-day furlough for all court employees except judges."

In a floor speech during Senate consideration of the bill, Senator Orrin G. Hatch (R-UT), chair of the Senate Judiciary Committee, said that "The Senate bill underfunds court support staff and operating expenses for the circuit and district courts by a net $257 million. . . .The support staff is needed to handle high levels of criminal cases, bankruptcy cases, pretrial services, and supervised release services. These duties are not going away." Hatch asked that the Senate work to provide the Judiciary with additional funding for support staff.

Considerable support for the Judiciary's budgetary plight also has been expressed in editorials appearing in some of the major newspapers across the country, including the *New York Times*, *Washington Post*, *Tampa Tribune*, *Dallas Morning News*, *Arizona Republic*, and *Sacramento Bee*.

The impact of the staffing crunch will be felt in significant reductions in the level of supervision of over 100,000 released felons, increased backlogs and delays in civil and bankruptcy cases, and difficulty in complying with the Speedy Trial Act, which could result in the dismissal of some criminal cases.

To avert serious curtailment of services to the public, the Judiciary has requested the funding levels be increased for Salaries and Expenses, Defender Services, and Court Security, and the higher Senate-level funding for the Court of Appeals for the Federal Circuit, the Court of International Trade, and the U.S. Sentencing Commission. Additional amounts also are requested for the AO and the Federal Judicial Center.

FBI Director Warns Judges Of Increased Risk

Addressing a recent meeting of the Federal Judges Association, Federal Bureau of Investigation Director Louis Freeh, himself a former federal judge, warned that the nature of threats against federal judicial officers and courthouses is changing—and not for the better. Freeh said that many threats no longer pinpoint individual judges or courthouses because of a specific ruling in a case, especially in terrorist trials. Instead, the threat is "displaced" to involve any judicial officer or courthouse as a target. This threat is difficult to guard against and requires a system-wide awareness of security needs and planning consistent with the wide spectrum of threats directed towards courthouses and judges.

In recognition that its facilities and judges are high-risk targets, the Judiciary is appealing for additional security funds in the fiscal year 2000 budget for increases in the number of court security officers, upgraded security systems and equipment for its facilities, and enhanced perimeter security. The Judiciary's concern is that, without the proper funding, the security provided to courthouses will not keep pace with the risks.

Bill Would Let Judiciary Send Budget Directly to Hill

Senator Thad Cochran (R-MS) introduced S. 1564, the Federal Courts Budget Protection Act, on August 5, 1999, in the Senate. The bill, which is attracting bipartisan support, would allow the federal Judiciary to submit its annual budget directly to Congress, bypassing the Office of Management and Budget (OMB). All the Judiciary's budget requests have gone through OMB, which in the past has not hesitated to alter the requests, even though such action is prohibited by law. Five times in the last 10 years, the executive branch has tried to reduce the Judiciary's operating budget request. Also, while not technically part of the Judiciary's budget, the executive branch removed General Services Administration (GSA) requests for courthouse construction funding in the President's fiscal year 1998, 199 and 2000 budgets. S. 1564 now goes to the Senate Committees on the

*See **Bill** on next page*

ABA Passes Resolutions On Judiciary

In addition to its support of the Federal Courts Budget Protection Act, at its semi-annual meeting the American Bar Association also approved resolutions on new federal criminal laws and the restructuring of the Ninth Circuit.

The ABA voted to "oppose enactment of legislation that mandates restructuring of the Ninth Circuit Court of Appeals into adjudicative divisions, in view of the absence of compelling empirical evidence to demonstrate adjudicative dysfunction." The ABA also opposes the creation of district court appellate panels within the circuits and the use of two-judge panels by any federal appellate court.

The Commission on Structural Alternatives for the Federal Courts of Appeals recommended in its final report to Congress last year that the Ninth Circuit not be split, but that it should be restructured into regionally based adjudicative divisions. The commission also recommended that Congress authorize, but not require, each court of appeals to decide some cases using two-judge panels, and the establishment of district court appellate panels.

The ABA voted its opposition to the trend toward greater federalization of state, local and territorial crime. Citing the 1998 Report of the Task Force on Federalization of Criminal Law, *The Federalization of Criminal Law*, the ABA urged Congress to take into account the following principles:

- Creation of new federal crimes is appropriate only where a federal interest is implicated and the state, local or territorial remedy is inadequate to address that interest.
- Institutional mechanisms, such as technical analyses, impact statements, and sunset provisions of fairly short duration should be considered to assist in Congress' analysis of proposed crime legislation and proposed new federal law-enforcement findings.

In response to constituent concerns about public safety, the ABA also asked Congress not to create new federal crimes that duplicate state crimes merely because the conduct at issue is deemed important.

The Judicial Conference has expressed concern over the growing trend to federalize offenses that have traditionally been the responsibility of state criminal justice systems. The Judicial Conference has maintained its "longstanding position that federal prosecutions should be limited to those offenses that cannot or should not be prosecuted in state courts."

Bill continued from previous page

Budget and Governmental Affairs for consideration.

Senator Orrin G. Hatch (R-UT), chair of the Senate Judiciary Committee, supports an OMB bypass. "The Judicial Branch should be required to be responsible in its budget requests, and I believe they are," Hatch told the Senate. "But, the Judicial Branch's budget should not be subject to reductions by the Executive Branch to fund the political priorities of the President. Current law prohibits such reductions, but the Administration does not follow this law. This is a systemic problem that I hope we can address in the future along with the Judiciary's current-year budget needs."

The Judicial Conference, through its Executive Committee, has indicated its strong support for S. 1564. The American Bar Association, at it annual meeting last month, also endorsed the legislation. The ABA's House of Delegates passed a recommendation urging Congress to amend federal law to authorize the judicial branch to submit its annual budget request, including its request for court facility construction projects, directly to Congress, and strengthen the statutory prohibition against the President altering the Judiciary's request when he submits the annual, unified federal budget request to Congress.

"...The Judicial Branch's budget should not be subject to reductions by the Executive Branch to fund the political priorities of the President."

Senator Orrin G. Hatch (R-UT)

Weeks Prior to August Recess See Action On Judgeship Nominations

In July, the Senate Judiciary Committee favorably reported 18 Article III judgeship nominations for Congress' consideration, including that of Judge Richard Paez (C. D. Calif.) whose nomination to the Ninth Circuit Court of Appeals was first received by the Senate in 1996 and who was renominated by President Clinton this year. The committee's ranking minority member Senator Patrick Leahy (D-VT) issued a statement saying he was "delighted to see us making progress with respect to a few of the scores of judicial nominees backlogged in the committee." In recent weeks, committee chair Senator Orrin G. Hatch (R-UT) has expressed his confidence that the work of the committee would continue at an appropriate pace throughout the year and has disputed claims of a slowdown in approving judicial nominations. As of September 1, there were 69 judicial vacancies in the federal courts: 24 on the courts of appeals, 44 in the district courts, and one vacancy on the U.S. Court of International Trade.

The week before Congress recessed in August, the White House sent nine judgeship nominations for congressional consideration. That brought the number of nominees pending, as of September 1, to 49.

The White House also followed through on its previously announced intention to nominate candidates to the U.S. Sentencing Commission, sending Congress the names of four Democratic nominees. No Republican nominations were made, reportedly because of Republican disappointment at the length of terms, which would be staggered. The Commission has been without commissioners since the end of the 105th Congress last October.

Congress confirmed 11 judicial nominees before the August recess, and with several weeks left until adjournment, this total may rise. Between 1979 and 1998, Congress confirmed an average of 53 nominees per session, but actual confirmations per session have fluctuated from a high of 135 in 1979, immediately after 1978 judgeship legislation created 152 new judgeship positions, to a low of 15 in 1989, when a similarly low number of judgeship nominations were submitted.

Judges Appointed by Year 1997-1999

Year	Appointed
1979	135
1980	64
1981	41
1982	47
1983	32
1984	43
1985	84
1986	44
1987	43
1988	41
1989	15
1990	55
1991	56
1992	66
1993	28
1994	101
1995	55
1996	20
1997	36
1998	65
1999*	11

** As of August 17, 1999.*

Rules Review & Comment Now on Web

The latest proposed amendments to the Federal Rules of Bankruptcy Procedure and the Federal Rules of Civil Procedure are available on the Judiciary's website at www.uscourts.gov and may be accessed by clicking on For Public Review, http://www.uscourts.gov/review.html. The full text of the proposed rules amendments and explanatory committee notes also are posted or are available on request from the Secretary to the Rules Committee.

The Judicial Conference Advisory Committees on the Bankruptcy and Civil Rules had the proposals posted on the Judiciary's website to encourage greater public comment and participation in the rulemaking process. As part of a two-year pilot project, comments may be sent electronically either through the Internet or by e-mail. Information on submitting comment is at http://www.uscourts.gov/rules2/submit.htm.

All suggestions and comments must be submitted—either electronically or in writing—no later than February 15, 2000. All written communications on the rules should be addressed to the Secretary of the Committee on Rules of Practice and Procedure, Administrative Office of the U.S. Courts, Washington, D.C. 20544.

The Judicial Conference Committee on Rules of Practice and Procedure (standing committee) has not approved these proposals but submits them for public comment. The proposals have not been presented to the Judicial Conference or the Supreme Court.

Judiciary's Own Virtual Law Library Opens For Business

This library is open 24-7. That's all day, every day. And you won't have a problem checking out materials. It's the new Virtual Law Library website, launched this month by the Administrative Office.

The library is a new desktop legal research tool available only to the federal courts, accessed through the Judiciary's J-Net, on its internal Data Communications Network. It provides, in one location, web access to comprehensive legal and general research sites such as the Indiana, Cornell, and Emory University law library sites; to federal and state government information resources and agencies; to business, scientific, and general information resources; and to links to circuit library websites and on-line catalogs. It includes the Judiciary's first web browser access to computer assisted legal research (CALR) services (i.e., Westlaw and Lexis-Nexis). In addition, many of the circuit libraries available through the Virtual Law Library have compiled their own web links to local court rules, state agencies, and other sites of interest to their local courts.

In announcing this latest legal research tool, AO Director Leonidas Ralph Mecham noted the versatility of the Virtual Law Library. "A key feature of the library is the web access to CALR," said Mecham. "Judiciary users now will have more options for conducting legal research, at no additional cost to the Judiciary."

The Virtual Law Library was a high priority initiative of the Judicial Conference Committee on Automation and Technology. Committee chair Judge Edward Nottingham (D. Colo.) saw the potential of a well-conceived website. "We envisioned the Virtual Law Library, not as a mega-site of every legal resource, but as a focussed, directed site that complements current resources," Nottingham said. "Access to the Virtual Law Library is not intended to replace libraries or hard-copy legal materials. Instead, web access allows users from all over the Judiciary to access the most frequently used legal resources at the click of a button. And the library doors literally never close."

Even for individuals who might conduct legal research infrequently, the website is user-friendly. On the library's home page, users are presented with the choice of three links: Westlaw and Lexis-Nexis Resources; Access to Web Collection; or Circuit Library Links. The Westlaw and Lexis-Nexis Resource link takes users to a long list of frequently used resources, from the American Law Reports to the West Legal Directory. Clicking on the Access link yields a list of resources such as Legal, Statistical, Medical or Science and Technology. Further exploration of the Legal Resources link, for example, produces Legal Resources by Topic, Law Firms, Associations and Publishers, and Comprehensive Legal Research, where a user may access the Cyberspace Law Center, the Legal Information Institute at Cornell University, or the Meta-Index for Legal Research, among others. The Circuit Library link gives users circuit library websites and circuit library catalogs.

Inside the Judiciary, visitors may find the Virtual Law Library at http://jnet.ao.dcn/publications/virtual_lib/.

Be A 2000-2001 Judicial Fellow

Program Invites Applicants

The Judicial Fellows Commission invites applications for the 2000-2001 Judicial Fellows Program. The program, established in 1973 and patterned after the White House and Congressional Fellowships, seeks outstanding individuals from a variety of disciplinary backgrounds who are interested in the administration of justice and who show promise of making a contribution to the Judiciary.

Up to four Fellows will be chosen to spend a calendar year, beginning in late August or early September 2000, in Washington, D.C., at the Supreme Court of the United States, the Administrative Office of the U.S. Courts, the Federal Judicial Center, or the U.S. Sentencing Commission. Candidates must be familiar with the federal judicial system, have at least one postgraduate degree and two or more years of successful professional experience. Fellowship stipends are based on salaries for comparable government work and on individual salary histories, but will not exceed the GS 15, step 3 level, presently $83,762.

Information about the Judicial Fellows Program and application procedure is available upon request from Vanessa M. Yarnall, Administrative Director, Judicial Fellows Program, Supreme Court of the United States, Room 5, Washington, D.C. 20543. Telephone: (202) 479-3415. The application deadline is November 5, 1999.

Nature, Not Number, of Fraud Cases Shifts

The number of fraud cases filed annually has ranked consistently near the top among the criminal offenses in the federal judicial system. A total of 8,342 of the 57,023 criminal cases filed in the district courts in 1998 were fraud cases. Of the 78,287 criminal defendants charged in 1998, 11,130 were defendants in fraud cases. The only criminal offenses with a greater number of cases are those related to drug laws and, in 1998, to immigration.

Since 1993, the number of fraud cases has remained relatively stable, although fraud cases filed did increase 6 percent in 1998, with the nature of filings varying over that time. These shifts in the types of fraud cases reported are likely a reflection of changes in the enforcement priorities of federal law enforcement rather than changes in the types of fraud violations being committed.

In an Administrative Office study of the number of federal fraud cases and defendants filed annually from fiscal year 1993 to fiscal year 1997, updated with data for 1998, it was reported that while the total number of fraud cases increased marginally, a more significant finding was that the nature of the fraud caseload in the district courts has been changing. Filings alleging false claims and statements, social security fraud, fraudulent citizenship, and conspiracy to defraud the United States constituted a significantly higher proportion of the fraud caseload, as lending institution and tax fraud filings fell.

Since 1993, filings involving postal, interstate wire, and radio fraud—which includes telemarketing fraud—have declined, but these types of cases continue to account for a sizable proportion of fraud filings. Large multi-state undercover operations by the Department of Justice (DOJ) resulted in prosecutions by U.S. attorneys of an unusually high number of these fraud cases with large numbers of defendants. In 1995 and 1996, several telemarketing fraud cases with over 20 defendants each were filed. One FBI sting, known as Operation Senior Sentinel, which concentrated on telemarketers targeting the elderly, resulted in the arrests of more than 400 people in 15 states.

From 1993 to 1996, more defendants were charged with postal fraud than any other type of fraud offense, but in 1997 the number of defendants charged with false claims and statements surpassed the number of postal fraud defendants for the first time. The number of false claims defendants grew 10 percent in 1996, and 18 percent in 1997, with similar annual percentage increases for cases.

Most new false claims filings occur under Section 1028 of Title 18 of the U.S. Code. This section makes illegal the production of false identification documents, the transfer of stolen or illegally produced identification documents, or the possession of false identification documents. The increase in false claims cases is related to the recent emphasis on preventing and prosecuting illegal immigration along the southwestern border of the U.S. In a 1997 press release on border control, the DOJ acknowledged that "increased apprehensions along the border will result in the greater use of fraudulent documents at the ports of entry."

Fraud cases grew 6 percent in 1998, in large part because of filings associated with immigration law violations in the southwestern districts. The combined number of fraud cases in the Southern District of Texas, the District of Arizona, the Southern District of California, and the District of New Mexico, increased 36 percent, although filings in the Western District of Texas fell 18 percent. Lending institution fraud cases also rose significantly, reversing several years of decline. Filings of false claims and statements cases went down 4 percent in 1998.

The changes in the nature of the fraud caseload since 1993 indicate how policy decisions by DOJ, as well as local U.S. attorneys, can affect criminal filings in the district courts. The growth or decline in certain types of fraud filings has been a reflection of where federal law enforcement agencies have concentrated resources rather than an indicator of the prevalence of specific types of fraud. This is evidenced by an increase in fraud cases along the southwestern border, primarily involving false claims or fraudulent identification documents, during a time of dramatic increases in the number of border patrol agents as well as filings of immigration law violations in the district courts.

Offense	Number of Defendants Per Fiscal Year					
	1993	1994	1995	1996	1997	1998
False Claims And Statements	1,947	1,718	1,733	1,912	2,251	2,166
Conspiracy to Defraud	258	388	621	1,290	1,317	1,454
Postal Fraud	2,214	1,877	2,420	2,195	1,741	1,677
Credit Card Fraud	978	1,055	1,258	1,174	1,074	939

October 1999 Program Calendar for The Federal Judicial Television Network

All times are Eastern Daylight Time

Aovances in Drug Abuse and Adoiction Research
Oct. 14, 1:00 p.m. LIVE; Oct. 22, 8:30, 10:30 a.m.; 12:30, 2:30 p.m.

Agricultural Bankruptcy
Oct. 28, 8:30 a.m.

All About the Circuit Executive's Office
Oct. 28, 1:30 p.m. LIVE

The Architecture of Antitrust
Oct. 6, 12:00 p.m.; Oct. 13, 10:00 a.m.; 3:30 p.m.; Oct. 20, 8:30, 11:30 a.m.; 2:30 p.m.

Assessment of Sex Offenoers for Sentencing, Supervision, and Treatment (NIC/CSOM)
Oct. 6, 1:30 p.m.

Basic Browser Usage
Oct. 25, 9:00 a.m.

Civil Service Retirement System
Oct. 15, 10:30 a.m.; Oct. 18, 11:30 a.m.

Computer-Generated Visual Evidence
Parts One & Two: Oct. 14, 9:30 a.m.

Contests ano Competitions as Instructional Tools
Part One: Oct. 7, 1:00 p.m. LIVE

Court to Court (October 1999)
Oct. 27, 8:30, 10:00, 11:00 a.m.; 12:00, 1:00, 2:00, 3:00, 4:00 p.m.; Oct. 28, 3:00, 4:00 p.m.

Court to Court (June 1999)
Oct. 7, 3:00, 4:00 p.m.; Oct. 21, 4:00 p.m.

Court Personnel System (court employees)
Oct. 12, 10:00 a.m.; Oct. 18, 1:30 p.m.; Oct. 26, 8:30 a.m.

Court Personnel System (judges)
Oct. 12, 10:30 a.m. ; Oct. 18, 2:00 p.m.; Oct. 19, 4:00 p.m.; Oct. 26, 9:00 a.m.; 4:00 p.m.

Courtroom Technologies
Oct. 12, 12:00 p.m.; Oct. 15, 4:30 p.m.; Oct. 18, 1:00 p.m.; Oct. 25, 2:00 p.m.

EDR Proceoural Overview
Oct. 5, 1:00 p.m. LIVE; Oct. 15, 8:30 a.m.; Oct. 19, 2:00 p.m.

EDR Substantive Overview
Oct. 5, 2:00 p.m. LIVE; Oct. 15, 9:30 a.m.; Oct. 19, 3:00 p.m.

Executive Briefing: Travel Regulations
Oct. 5, 8:30 a.m.

Feoeral Employees Retirement System (FERS)
Oct. 18, 9:00 a.m.

Federal Retirement Benefits for Court Personnel: Frequently Askeo Questions
Oct. 4, 12:30 p.m.; Oct. 15, 1:00 p.m.; Oct. 18, 10:30 a.m.; Oct. 19, 8:30 a.m.; Oct. 29, 11:30 a.m.

FJTN From Where You Sit
Oct. 7, 12:00 p.m. LIVE; Oct. 28, 12:00 p.m. LIVE

FJTN News Upoate
Airs throughout the FJTN broadcast day before and after programming

Furniture ano Furnishings Acquisition
Oct. 1, 2:30 p.m.; Oct. 25, 3:30 p.m.; Oct. 26, 9:30 a.m.

In Camera
Every Monday at 8:30 a.m. Every Tuesday at 4:30 p.m.

Introouction to Case Management and Electronic Case Filing
Oct. 4, 2:30 p.m.; Oct. 5, 3:00 p.m.; Oct. 12, 8:30 a.m.; Oct. 18, 2:30 p.m.; Oct. 26, 11:00 a.m.

Introouction to NCIC 2000
Oct. 5, 10:00 a.m.; Oct. 12, 2:00 p.m.

Judiciary Benefits Initiative: Announcement of the Judiciary's Long-Term Care Insurance Plan
Oct. 12, 11:00 a.m.; Oct. 18, 4:00 p.m.; Oct. 25, 12:00 p.m.; Oct. 26, 3:00 p.m.

Judiciary Benefits Initiative: Flexible Spending Accounts
Oct. 19, 1:00 p.m. LIVE; Oct. 29, 2:30 p.m.

Managing Generation X
Oct. 14, 11:00 a.m.

Navigating Through the AO Training Website
Oct. 1, 1:30 p.m. LIVE; Oct. 15, 12:00 p.m.

Neurobiology of Aooiction
Oct. 6, 8:30 a.m.; Oct. 21, 11:00 a.m.

New Feoeral Court Reporter Orientation
Oct. 4, 11:00 a.m.; Oct. 15, 3:00 p.m.

Organization ano Jurisoiction of the United States Bankruptcy Courts
Oct. 28, 10:00 a.m.

An Overview of the Feoeral Employees Health Benefits
Oct. 26, 1:00 p.m. LIVE; Oct. 29, 3:30 p.m.

Personal Strategies for Navigating Change
Oct. 21, 1:00 p.m. LIVE

Perspectives on Probation and Pretrial Services (April 1999)
Oct. 14, 8:30 a.m.

Pharmacology of Drugs of Abuse
Oct. 8, 8:30, 10:00, 11:30 a.m.; 1:00, 3:30 p.m.

Pretrial Services Investigations and Reports Training
Oct. 4, 9:00 a.m.; Oct. 29, 9:30 a.m.

Prison Litigation Reform Act Update
Oct. 6, 10:30 a.m.; Oct. 13, 8:30, 11:30 a.m.; Oct. 20, 10:00 a.m.; 1:00 p.m.

Restitution: Determining Victims and Harms
Oct. 7, 8:30 a.m.Oct. 14, 2:30 p.m.; Oct. 21, 8:30 a.m.

Review of Travel Regulations for Support Staff
Oct. 12, 1:00 p.m. LIVE; Oct. 19, 11:30 a.m.; Oct. 29, 8:30 a.m.

Security for Judiciary Computer Users
Oct. 1, 8:30 a.m.; Oct. 4, 4:00 p.m.; Oct. 25, 11:00 a.m.

Space and Facilities Courthouse Projects
Programs A and B: Oct. 19, 9:30 a.m.

Time Management (PBS)
Oct. 13, 12:55 p.m. LIVE

Using Knowledge Management in Your Court
Oct. 1, 4:00 p.m.; Oct. 5, 9:00 a.m.; Oct. 26, 2:00 p.m.

WordPerfect 8.0 Basics
Oct. 29, 12:30 p.m.

WoroPerfect Document Formatting
Oct. 15, 2:00 p.m.; Oct. 25, 2:30 p.m.

WoroPerfect File Management
Oct. 1, 9:30 a.m.

WoroPerfect QuickFamily
Oct. 4, 1:30 p.m.; Oct. 25, 1:00 p.m.

WoroPerfect Templates
Oct. 1, 11:30 a.m.

Calendar Dates for The Third Branch

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OCTOBER

4-6 **Monday-Wednesday**
Seminar for Court of Appeals Judges

11-13 **Monday-Wednesday**
First Circuit Conference

14-15 **Thursday-Friday**
Advisory Committee on Civil Rules

17-19 **Sunday-Tuesday**
Third Circuit Conference

21-22 **Thursday-Friday**
Advisory Committee on Appellate Rules

20-22 **Wednesday-Friday**
Tenth Circuit Conference

25 **Monday**
Advisory Committee on Evidence Rules

25-28 **Monday-Thursday**
Phase I Orientation for Bankruptcy Judges

25-29 **Monday-Friday**
Phase II Orientation for New Magistrate Judges

PLEASE POST

VACANCY ANNOUNCEMENTS
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CHIEF PROBATION OFFICER, District of Rhode Island

The District Court for the District of Rhode Island seeks applicants for the position of Chief Probation Officer. A minimum of six years of specialized, progressively responsible experience including management responsibilities is required. Salary: $67,298-$117,198, contingent on education and experience. Grade Range: JSP 14-1 to 16-10. Progressively responsible experience in the investigation, supervision, counseling and guidance of offenders in community correction, probation and/or pretrial programs is required. Experience in fields such as education guidance counselor, social worker, caseworker, psychologist, substance abuse specialist, and correctional researcher may constitute a portion of the specialized experience. Experience in police officer, FBI agent, customs agent, marshal or similar positions do not meet the requirements of specialized experience. First-time appointees to positions covered under law enforcement officer retirement provisions must not have reached their 37th birthday at the time of appointment. Persons interested in applying should send their resume and cover letter to: ATTN: CPO-99 David A. DiMarzio, Clerk of Court, John O. Pastore Federal Building, Two Exchange Terrace, Providence, RI 02903. **Application deadline: September 30, 1999**

ASSISTANT FEDERAL DEFENDER, Capital Habeas Unit, Eastern District of California

The Office of the Federal Defender for the Eastern District of California is accepting applications for the position of Assistant Federal Defender for its Capital Habeas Unit. Responsibilities include managing an extensive caseload with cases at varying stages of litigation. All applicants must either be admitted to the California bar or be a member in good standing of another state's bar and be willing to take the California bar examination. Applicants must have strong writing and advocacy skills, a commitment to the representation of indigent capital defendants, the ability to work in a team environment, and must possess effective organization skills and the ability to set priorities. At least four years of attorney experience required. Capital trial or post-conviction experience preferred. This is a full-time position with federal salary and benefits based on qualifications and experience. To apply, send cover letter, resume, three references and writing sample to: Office of the Federal Defender, Eastern District of California, 801 K Street, 10th Floor, Sacramento, CA 95814. **Application deadline: Open until filled.**

CHIEF DEPUTY CLERK, U. S. Bankruptcy Court for the District of Oregon, Portland

Salary: JSP-16 ($94,536 TO $119,335). Required: Minimum of six years of progressively responsible managerial and administrative experience. Preferred: Managerial experience in a court environment. Submit resume including work and salary history and references to U. S. Bankruptcy Court, Attn: Sheila Walker, 1001 S. W. Fifth Avenue, #700, Portland, Oregon 97204. **Deadline: Open until filled.** To ensure consideration submit by October 15, 1999.

ASSISTANT FEDERAL DEFENDER, Southern District of Illinois, East St. Louis

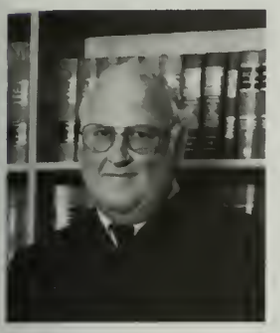
The Office of the Federal Public Defender in the Southern District of Illinois seeks applications for the position of Assistant Federal Defender. A successful applicant must be an active member in good standing of the bar of any state or territory; have substantial criminal trial experience and knowledge of federal criminal trial practice and federal sentencing guidelines with the ability to immediately undertake the defense of major criminal cases in U.S. district court. Applicants must have a reputation for integrity and a commitment to the representation of those unable to afford counsel. Salary: commensurate with assistant U.S. attorneys. Starting date subject to funding. No phone calls or personal visits, please. Send resume, three references, and writing sample to: Federal Public Defender, 650 Missouri Ave., Suite G-10A, East St. Louis, IL 62201. **Application deadline: Open until filled.**

CHIEF PROBATION OFFICER, District of South Carolina, Columbia

Applications are being accepted for the position of Chief Probation Officer in the District of South Carolina, headquartered in Columbia. The District has a combined Probation/Pretrial Services Office with field offices in Columbia, Charleston, Greenville, Florence and Beaufort. A bachelor's or master's degree in social sciences, criminal justice, public administration or related field(s), or a law degree is required, as well as a minimum of eight years of progressively responsible administrative, technical and managerial experience. First time appointees to positions covered under law enforcement officer retirement provisions must not have reached their 37th birthday at the time of appointment. Candidates must have a performance history that demonstrates proven skill in managing limited resources against multiple demands, strong organizational prioritizing and problem solving skills, and solid oral and written communication skills. Submit a cover letter with a detailed resume of qualifications and experience to Chief Judge C. Weston Houck, Re: Chief Probation Officer Vacancy, P.O. Box 2260, Florence, SC, 29503. **Application deadline: October 29, 1999.**

EQUAL OPPORTUNITY EMPLOYERS

Chief Justice Makes Judicial Conference Appointments



Chief Judge Ralph K. Winter, Jr.

Chief Judge Charles H. Haden II

Judge James M. Rosenbaum

Chief Judge Michael J. Melloy

Chief Justice William H. Rehnquist has made a number of new appointments to Judicial Conference committees, effective October 1, 1999. The appointments include a new chair of the Executive Committee and two new Executive Committee members, six new chairs of Conference committees and the reappointment of five committee chairs.

Chief Judge Ralph K. Winter, Jr. (2nd Cir.) succeeds Judge Wm. Terrell Hodges (M.D. Fla.), whose term on the Judicial Conference expires September 30. Winter, who has been a member of the Executive Committee since 1998, is joined on the eight-member committee by two new members, Chief Judge Charles H. Haden II (S. D. W.Va.) and Judge James M. Rosenbaum (D. Minn.).

The six new Conference chairs are Chief Judge Michael J. Melloy (N.D. Iowa), who succeeds Judge David R. Thompson (9th Cir.) as chair of the Committee on the Administration of the Bankruptcy System; Judge William W. Wilkins, Jr. (4th Cir.), who succeeds Chief Judge George P. Kazen (S. D. Tex.) as chair of the Committee on Criminal Law; Chief Judge Paul A. Magnuson (D. Minn.), who succeeds Judge Cynthia H. Hall (9th Cir.) on the Committee on International Judicial Relations; Judge Dennis Jacobs (2nd Cir.), who succeeds Chief Judge Julia Smith Gibbons (W. D. Tenn.) on the Committee on Judicial Resources; Judge Milton I. Shadur (N.D. Ill.), who succeeds Judge Fern M. Smith as chair of the Advisory Committee on Evidence Rules; and Judge Jane R. Roth (3rd Cir.), who succeeds Judge Norman H. Stahl (1st Cir.) as chair of the Committee on Security and Facilities.

Five reappointments have been made. The following judges will continue as chairs of their respective committees for an additional year: Chief Judge Edward B. Davis (S. D. Fla.) as chair of the Committee on the Administrative Office; Judge Stanley S. Harris (D. D.C.) as chair of the Committee on Intercircuit Assignments; Judge William J. Bauer (7th Cir.) as chair of the Committee to Review Circuit Council Conduct and Disability Orders; Judge Adrian Duplantier (E. D. La.) as chair of the Advisory Committee on Bankruptcy Rules; and Judge Paul V. Niemeyer (4th Cir.) as chair of the Advisory Committee on Civil Rules.

By delegation from the Judicial Conference, the Chief Justice makes all appointments to Judicial Conference committees and determines tenure. He is assisted by the Judicial Conference Secretary, Leonidas Ralph Mecham. Committee chairs—with the exception of the chairs of the Executive, Judicial Branch, and Budget Committees—serve for a term of three years. Five to six years of cumulative committee service, including past committee assignments, is considered the maximum a member may serve. Every two years, the Judicial Conference Executive Secretariat surveys all judges to identify individuals who wish to serve as members of Conference committees and their preferences. Membership on a committee is in addition to the responsibilities a judge carries as a member of his or her court.

Judge William W. Wilkins, Jr.

Chief Judge Paul A. Magnuson

Judge Dennis Jacobs

Judge Milton I. Shadur

Judge Jane R. Roth

JUDICIAL MILESTONES

Appointed: Keith P. Ellison, as U.S. District Judge, U.S. District Court for the Southern District of Texas, August 2.

Appointed: W. Allen Pepper, Jr., as U.S. District Judge, U.S. District Court for the Northern District of Mississippi, July 21.

Appointed: Carol A. Doyle, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Illinois, July 26.

Appointed: William F. Stone, Jr., as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Western District of Virginia, July 23.

Appointed: Donald W. Bostwick, as U.S. Magistrate Judge, U.S. District Court for the District of Kansas, July 22.

Appointed: William B. M. Carter, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of Tennessee, July 30.

Appointed: Leslie E. Kobayashi, as U.S. Magistrate Judge, U.S. District Court for the District of Hawaii, August 2.

Elevated: Judge Stephen M. McNamee, to Chief Judge, U.S. District Court for the District of Arizona, succeeding Judge Robert C. Broomfield, August 13.

Elevated: Judge B. Lynn Winmill, to Chief Judge, U.S. District Court for the District of Idaho, succeeding Judge Edward J. Lodge, June 1.

Senior Status: Judge Robert C. Broomfield, U.S. District Court for the District of Arizona, August 12.

Senior Status: Court of Appeals Judge Henry A. Politz, U.S. Court of Appeals for the Fifth Circuit, August 10.

Retired: Senior Court of Appeals Judge Bailey Aldrich, U.S. Court of Appeals for the First Circuit, July 5.

Deceased: Senior Judge Richard C. Freeman, U.S. District Court for the Northern District of Georgia, August 26.

Deceased: Judge Robert S. Gawthrop, III, U.S. District Court for the Eastern District of Pennsylvania, August 1.

Deceased: Senior Court of Appeals Judge Frank M. Johnson, Jr., U.S. Court of Appeals for the Eleventh Circuit, July 23.

Deceased: Magistrate Judge Ronald C. Newman, U.S. District Court for the District of Kansas, August 21.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of September 1, 1999

Courts of Appeals	
Vacancies	24
Nominees	15
District Courts	
Vacancies	44
Nominees	33
Court of International Trade	
Vacancies	1
Nominees	1
Courts with Judicial Emergencies	24

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Need an Interpreter? Court Interpreters Database Has the Names

When the melting pot that is America meets the U.S. justice system, sometimes defendants need more than a good lawyer—they need an interpreter. An essential element in ensuring justice to defendants charged by the United States is the provision of a court interpreter when those defendants speak only or primarily a language other than English. Last year over 65 languages from Albanian to Yoruba were heard and interpreted in over 144,000 federal court hearings and trials. Sixteen courts nationwide have certified Spanish language court interpreters on staff. Where do the courts find other interpreters?

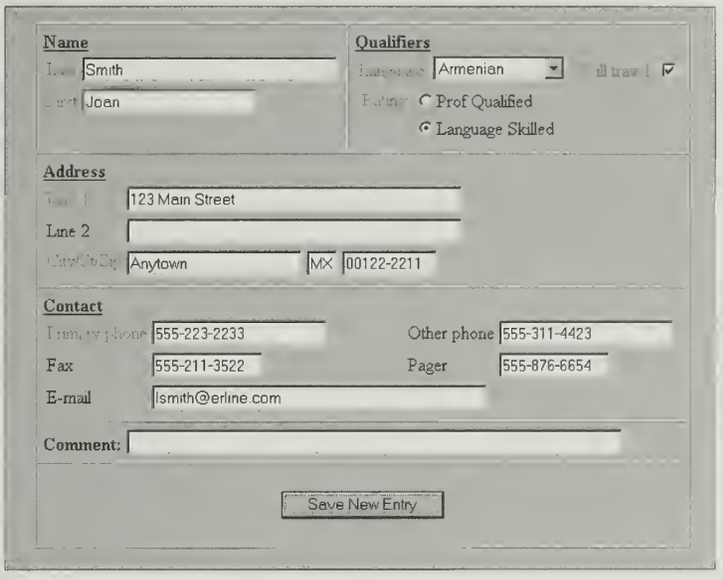
For many years, courts have kept a local roster of individuals who previously have been qualified by one or more judges to interpret for the court. Typically, each roster might cover the languages commonly encountered at the court. But what if a qualified interpreter is needed for a defendant speaking Napalese in the Western District of Michigan? Or enough interpreters to interpret for defendants speaking Foochow in nearly 408 court events in the Southern District of New York over the course of a year? With the assistance of technology, courts can now start their searches for interpreters on-line.

At the recommendation of the Judicial Conference Committee on Court Administration and Case Management, the Administrative Office has created a National Court Interpreters Database, accessible through the Judiciary's intranet website. Many district courts have now entered into the database the names, addresses, telephone numbers, languages, and types of qualifications assessed by the court for the interpreters they use. In addition, interpreters certified by the AO as court interpreters in the Spanish, Navajo and Haitian Creole languages have been added to the database. The result is expanded and prompt access to interpreters for all courts.

"Certain languages are so rare," said Teresa Salazar who is in charge of the court interpreters in the District Court for the District of Columbia, "that sometimes you can't find anyone professionally qualified or even minimally experienced to interpret for your court, even in an area like Washington that has a concentration of qualified interpreters in a wide range of languages. For example, recently we had problems finding a Kurdish interpreter. And although we usually have a week or more to locate an interpreter, things may come up suddenly and an interpreter is needed immediately." In such a tight spot, Salazar would turn to the database of interpreters where she can search by language for an interpreter.

Several years ago the AO may have simply requested copies of the court's interpreter roster and copied and circulated them throughout the court system. Richard Seidel, who designed the database, says ready court access to the Judiciary's intranet has changed that. "Courts can add and edit interpreter information," said Seidel, "and, most importantly, search for the interpreters they need by state or the entire country." Right now the interpreter database lists certified interpreters and many interpreters from local rosters who are considered either "professionally qualified" or "language skilled." According to William Moran, deputy chief of the AO's District Court Administration Division, the database has been well received by district clerks and provides an excellent tool for locating interpreters. "Deputy clerks can now provide judges with the names and some basic information on potential interpreters from the database," said Moran, "and valuable time can be saved in locating interpreters." But he also pointed out that interpreters listed in the database as either "professionally qualified" or "language skilled," should be re-qualified by the presiding judge to ensure that the individuals have the requisite skills and abilities to interpret for the required proceedings. The AO has tested only the interpreters listed as certified, and the courts can use those certified interpreters with assurance of their abilities to interpret.

Future plans call for the addition of state rosters if those rosters are available, which will give courts even greater access to interpreter resources.



An example of a data entry screen in the court interpreter database.

Dispensing Ethics Advice to the Federal Judiciary is Committee Work

Judge Carol Bagley Amon is the chair of the Judicial Conference Committee on Codes of Conduct. She was appointed to the District Court for the Eastern District of New York in 1990.

Q: What were your impressions of the Committee when you initially became involved with it?

A: I was appointed to the Codes of Conduct Committee five years ago. Like most judges, I was generally familiar with applicable ethical standards, and I knew the Committee was available to provide ethical advice. What I did not fully appreciate was the number and complexity of the ethical issues the Committee grapples with each year. Since I joined the Committee, I have participated in issuing over 400 advisory opinions responding to judges' questions. There is literally no area of a judge's daily life, on or off the bench, where ethical considerations do not arise. I have come to keenly appreciate the service the Committee provides, and am honored to have the opportunity to serve as a member and now chair of this important group.

Q: The Committee on Codes of Conduct has been dispensing ethics advice for over 20 years. What areas generate the most inquiries to the Committee?

A: If the Committee were to publish a list of inquiries received over the past two decades, probably half of them would involve the same central question: "Should I recuse in these circumstances?" The particular circumstances judges have asked about vary widely: family and social relationships, financial interests, business dealings, outside activities. As an example of the complexities presented by family relationships, judges have frequently asked when they should disqualify themselves because of a relative's relationship with a law firm appearing in a case. What if the relative is an associate and not a partner? What if the relative doesn't work on the case but supervises those who do? And do the same considerations apply to an attorney relative who works for a government agency rather than a law firm? Financial interests also pose a wealth of difficulties, since judges must recuse when they have a financial interest in a party. Questions can be raised about the most fundamental issues. Is a particular asset—for example, a bond or similar debt instrument—a financial interest in the company? (Probably not.) Are all members of a class action considered parties, and what about amici? (Yes and no.) Are judges really required to disqualify themselves when their minor children are the vested beneficiaries of a trust that owns stock in a party? (Yes)

The second largest category of inquiries the Committee receives pertain to activities outside of judicial duties. For example, questions often come from judges who have been invited to give a speech or lecture and are offered compensation. Is the compensation an honorarium, which can't properly be accepted, or does it qualify as teaching, for which judges may be paid (with the approval of their circuit chief judges)? Of course, concerns can arise even when no compensation is offered if there is something about the group sponsoring the activity or the nature of the seminar that raises ethical issues. Judges always must be alert to

Judge Carol Bagley Amon (E.D. NY)

invitations to speak at fund-raising events, which are not always identified in advance as fund-raisers.

Q: You mentioned that the Cod of Conduct for United States Judges encompasses behavior both on and off the bench. How far does the Code reach?

A: The following activities, mos of which judges consider part of their private, extrajudicial lives, are all addressed in the Code i some manner: family, social, and other relationships (Canon 2); law-related activities, including bar associations and law-school teaching (Canon 4); involvement in the arts, sports, and social and recreational pastimes (Canon 5A); membership i educational, religious, charitable, fraternal, and civic groups (Canon 5B); business dealings and financial investments (Canon 5C); and political activities, which are essentially off limits, (Canon 7). One of the more interesting aspects of the Code is how it addresses situations where activities on the bench and off the bench intersect. When judges join local organizations, which they may do properly in the private time, they will be somewhat restricted because of their official positions. For example, they may not

use the prestige of judicial office to benefit private organizations, which is why they should not be personally involved in fund-raising activities, and they should not give legal or investment advice to the organization. Conversely, when judges' outside activities are too closely connected to cases before them, they may find they need to recuse. It can be quite disruptive if judges are frequently disqualified from judicial matters because of financial conflicts, for example, and so the Code advises judges to manage their investments so as to minimize the number of cases in which they are disqualified. For much the same reason, judges are advised not to join organizations or attend private seminars sponsored by groups that are actively involved in litigation in the federal courts.

Q: How does your Committee make judges aware of their responsibilities? Do you see the Committee as a watchdog or as an advisor?

A: The Committee is purely an advisory group. We have no enforcement power, and we do not desire it. Our role is to help judges adhere to standards of ethical behavior by answering their questions and providing them confidential guidance. It is to everyone's benefit to advise judges and employees that we think a specific course of action is inappropriate before they embark on it.

We also make an effort to reach out to all judges so that they are aware of their responsibilities. Over the past year, the Committee has enhanced its education and training efforts by including a segment on ethics in the Federal Judicial Center's national workshops for district and bankruptcy judges. We are planning similar presentations at next year's training sessions for magistrate judges.

Q: The judges' Code, especially the requirements on recusal, can be fairly complicated. What is the Committee doing to assist judges in this area?

A: Recent media stories in Kansas City, Minneapolis and New York criticized judges who allegedly failed to recuse themselves when they or their spouses owned stock in a party. This criticism has lent added importance to the Committee's efforts. Over the past year, the Committee has undertaken a number of initiatives to assist judges in understanding and meeting their recusal obligations. I just mentioned the enhanced educational efforts. In addition, we are working with the Administrative Office to develop conflicts screening software that will be available for use in district and bankruptcy courts. The software will compare recusal lists, prepared by the judges, to the court's docket. This summer, the AO working group undertook a demonstration of the software in three district courts and three bankruptcy courts. We expect that the software will be made available to judges and clerks of courts in September of 1999.

The Committee also has developed model conflicts checklists, which can be used in conjunction with the new conflicts screening software. The checklists are designed to assist judges in identifying financial and other interests that could present conflicts requiring recusal. Copies of the checklists will be provided to all judges and clerks and will be used in upcoming judicial training seminars. The checklists will also be reprinted in Volume II of the *Guide to Judiciary Policies and Procedures*.

We also are working with the Rules Committee to consider proposing a rule requiring parties to disclose their corporate parents. Disclosure of corporate parents by the parties presents a simple way for judges to determine whether a subsidiary of a company in which they own stock is a party to a case, necessitating recusal.

Q: What about judicial employees? What guidance is available to them?

A: The Code of Conduct for Judicial Employees, which appears in Volume II of the Guide, and also is published in the form of a small green pamphlet, provides general as well as specific guidance for judicial employees. Provisions range from Canon 1, which states that "judicial employee should uphold the integrity and independence of the Judiciary and of the judicial employee's office," to Canon 5 that states that "judicial employee should refrain from inappropriate political activity," and then addresses a variety of prohibited activities, such as making speeches for or publicly endorsing or opposing a partisan political candidate. Employees also are subject to the gift regulations and honoraria provisions that appear in Volume II of the guide. Judicial employees may request confidential advice from the Committee, but they are asked to speak with their appointing officer before doing so.

Q: Have there been any recent revisions to the Committee's published ethics materials? If so, what and why?

A: The Committee recently reissued Volume II of the *Guide to Judiciary Policies and Procedures* in its entirety. Volume II contains the most recent versions of the three codes of conduct (for judges, judicial employees, and federal defender offices), published advisory opinions, and ethics regulations. It also contains the 1999

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edition of the Compendium of Selected Opinions, which summarizes unpublished advice of the Committee. This new version of the compendium includes summaries of over 1,400 confidential opinions, including all of those issued in the last two years. This is a particularly useful resource for judges because it provides concrete examples of advice judges have received in situations similar to theirs.

We reissued the entire Volume II even though much of it is unchanged from prior years, because it is important that judges have the most up-to-date information available to them. For the same reason, the Committee routinely reviews and revises both the Compendium and other published ethics advice.

Q: What is the Committee's view of the recent postings on the internet by the media of judges' financial disclosure statements?

A: At the request of the Judicial Conference, my Committee examined a proposal to make available to litigants and/or the public copies of judges' recusal lists. We concluded that no ethical principles require judges to make these lists available. We also determined that public disclosure of judges' financial interests can have unwelcome, adverse side effects. As a consequence, the Committee recommended against a blanket rule requiring judges to make recusal lists available to litigants, although we did suggest that judges could weigh the competing considerations and decide on an individual basis whether to disclose this information. The Committee has not adopted any formal positions about postings on the Internet, but I would certainly question the value of doing this for many of the same reasons that I did not support a requirement that judges make their recusal lists public.

Q: What are the top three or four pieces of practical advice you would like to communicate to your colleagues?

A: 1. Keep track of your financial interests (and those of your spouse and minor children residing in your household) and use some sort of mechanism to screen fo conflicts of interest.

2. When someone invites you to speak, make certain you examine all of the circumstances before you accept: Is it a fund-raiser? Can you properly accept compensation? Is the subject an appropriate one for you to address? Would you be improperly lending the prestige of office to a for-profit or commercial sponsor?

3. Be cautious about providing letters of recommendations to attorneys, including former associates and litigants appearing before you; Advisory Opinion No. 73 provides useful guidance.

4. Each fall, make sure your law clerks review the *Code of Conduct for Judicial Employees* and let them know of any special standards you want them to observe.

And here's a bonus suggestion: Don't hesitate to seek advice from th Committee.

THE THIRD BRANCH

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THE THIRD BRANCH

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FEDERAL DEPOS

Judicial Conference Adopts Rules Changes, Confronts Projected Budget Shortfalls

A series of changes to court rules was approved by the Judicial Conference at its biannual meeting last month. The changes are aimed at bringing uniformity to the pretrial exchange of information while reducing expense and delay in certain civil cases. The Conference also received an update on the Judiciary's potentially severe budget shortfall for fiscal year 2000.

While it will require $4.3 billion to operate the judicial branch in the upcoming fiscal year, the Senate has set an appropriations level of only $3.8 billion and the House $3.9 billion. A House-Senate conference to determine a final funding level is expected to occur soon. In a letter last month to congressional leaders, Chief Justice William H. Rehnquist said that the Senate level is "both unjustified and impractical," and the House level would "have a noticeable impact on court operations." Federal judges, Administrative Office Director Leonidas Ralph Mecham, and AO staff continue to communicate aggres-

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Continuing Resolution Means Business As Usual—At Least Until October 21

Two days before the start of the new fiscal year 2000, and with nearly half the 13 appropriations bills still to be considered, Congress passed a joint resolution authorizing continuing appropriations for FY 2000 through October 21. The President signed H. J. Res. 68 September 30. A continuing resolution gives budgetary authority to federal departments and programs until regular appropriations bills are enacted. The continuing resolution averts a shutdown of the federal government, including the federal courts.

In anticipation of a continuing resolution, the Executive Committee of the Judicial Conference had approved interim financial plans to fund court-wide operations at the present level of staffing, pending approval of the Judiciary's appropriations act. Courts will operate at their FY 99 rate of obligations, but will defer all discretionary contracts and acquisition of goods and services.

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Caseloads Swamp Border Courts

Five southwest districts now handle 26 percent of all federal criminal filings in the United States. In the District Court for the Southern District of Texas, 1998 criminal filings were up nearly 72.8 percent over 1997, topping 3,000. Filings in 1999 are expected to exceed those in 1998. The District Court for the Southern District of California had a weighted caseload per authorized judgeship of over 1,000 cases in 1998. The national average is 484. In the Western District of Texas there were 48 completed trials per authorized judgeship in 1998, almost double the national average of 25. The District Courts for New Mexico and Arizona have equally eye-popping statistics. What's going on?

Chief Judge of the Fifth Circuit Court of Appeals, Carolyn Dineen King, asked that question when she was elevated to chief judge in January. The answer was the same in all the border districts. Increases in law enforcement resources at the border are not matched by increases in court resources. As a result, the courts are swamped with work. Work-

See ***Border*** *on page 4*

Conference continued from page 1

sively the Judiciary's needs to Congress.

It takes less than two-tenths of one percent of the entire federal budget to run the judicial branch. However, cognizant of the budget constraints facing Congress, the Judiciary requested funding that would allow it to provide only the same level of services as FY 99, despite continuing growth in caseload. It also agreed to a court staffing freeze for the second year in a row. Nevertheless, depending on final funding levels, all court employees still could be furloughed for two weeks, money to pay lawyers who represent indigent defendants could run out next summer, and the number of probation and pretrial services officers, who supervise 100,000 released felons, could be cut—seriously compromising public safety.

A copy of the Chief Justice's letter to Congress, a formal Judiciary appeal letter, and other background on the Judiciary's budget can be found on the Judiciary's Internet site (www.uscourts. gov, click on "What's New.").

Chief Judge J. Harvie Wilkinson III (4th Cir.) and Chief Judge Edward R. Becker (3rd Cir.) at the reception honoring Judge Wm. Terrell Hodges.

Amendments Approved

The amendments approved by the Conference for further review by the Supreme Court and Congress affect the Federal Rules of Civil Procedure and follow a three-year study and extensive discussion by judges and lawyers across the country. These particular rules impact primarily the pretrial exchange of information by attorneys known as "discovery." Discovery

Conference Honors Judge Wm. Terrell Hodges

Judge Wm. Terrell Hodges completed his term as chair of the Judicial Conference Executive Committee on September 30. "With deep appreciation, respect and admiration," the Conference recognized "his exceptional intellect, keen analytical ability, and statesman-like demeanor" in a resolution presented to Hodges by Chief Justice William H. Rehnquist at a reception in his honor.

A man of "impeccable integrity," the resolution read, "Judge Hodges has been a superb Executive Committee Chair and an outstanding leader, who never wavered from the high-quality professionalism that is his standard. He set the tone for each Committee meeting with his thorough preparation, receptiveness to views of other members, and insightful comments. Through his astute grasp of the issues, and quick analysis of concerns expressed during Committee discussions, he was consistently able to forge Executive Committee consensus."

Hodges was chair of the Executive Committee from October 1, 1996, to October 1, 1999, and a member of the Committee from 1994. He also served on a variety of Conference committees, including three years as chair of the Advisory Committee on Criminal Rules. He was only the second district judge in the history of the Conference to be appointed chair of the Executive Committee.

Left: Chief Judge Stephanie K. Seymour (10th Cir.) and Chief Judge Charles H. Haden II (S. D. W. Va.) arrive at the Supreme Court, where the reception honoring Judge Hodges was held.

Below: Judge Dennis Jacobs (2nd Cir.) and Chief Judge Carolyn Dineen King (5th Cir.) were among the guests.

represents 50 percent of the litigation costs in the average case and up to 90 percent of the litigation costs in cases in which it is actively used.

The Conference approved all the proposed rule changes except for changes to Rule 26(b)(2) on cost bearing. The failed amendment would have explicitly provided that the judge may direct the party making a discovery request to bear the cost of producing the information requested if information being sought is duplicative or unusually cumulative or if the burden or expense of the discovery outweighs its likely benefit.

The proposed rules changes can be found at www.uscourts.gov, by clicking on "For Public Review." They include the following:

Initial Disclosure

Rule 26(a)(1). This rule provides for the early automatic exchange of pretrial information, but permits courts to opt-out of this requirement, leaving a wide variety of practices across the country. The amendment would provide for a consistent national rule by removing the opt-out provision. Unlike the existing rule, however, the amended version would provide that only information that is favorable to the disclosing party need be revealed.

Scope of Discovery

Rule 26(b)(1). Many lawyers want greater judicial involvement to control excessive discovery. This amendment would enhance a judge's authority to get involved in particularly contentious discovery. It states that an attorney is still entitled to receive without judicial intervention information that is "relevant to the claim or defense" of any party. However, discovery that goes beyond this and the subject matter in general would be allowed only when ordered by a judge.

Depositions

Rule 30. The pretrial questioning of potential witnesses, known as depositions, often are the most expensive form of discovery. The amendment adopts a presumption that no deposition should last more than one seven-hour day, unless approved by the court.

Congress has authorized the federal Judiciary to prescribe the rules of practice, procedure, and evidence for the federal courts, subject to the ultimate right of Congress to reject, modify, or defer any rules. Because of the potential impact of rules changes, the process for amending rules typically involves a minimum of seven stages and usually takes three years. The rules changes approved by the Conference now will be sent to the Supreme Court for consideration later this year. After conducting its review, the Court normally transmits proposed rules amendments to Congress by May 1.

Congress has a statutory period of at least seven months to act on the rules submitted by the Court. If Congress does not enact legislation impacting on the rules, they take effect as a matter of law on December 1.

Border continued from page 1

ing in these border courts has become, in the words of Chief Judge George P. Kazen (S. D. Tex.) "like working in a war zone." Incredibly, in the Western District of Texas, Del Rio has a caseload nearly twice the national average per judge—and no sitting judge. Similarly, Las Cruces, in the District of New Mexico, receives 65 percent of the district's criminal cases, but has no active judge, only a duty judge who sits for a month at a time. "The duty judges do anything that needs to be done," said Chief Judge John E. Conway (D. N.M.), "hearings, trials, sentencings. They have to. At Las Cruces, we have 400 defendants in jail awaiting court action."

"We're overwhelmed with cases, both immigration cases and drug cases. Anywhere you go in the border enforcement area, it will involve both kinds of cases," said Chief Judge Stephen M. McNamee (D. Ariz.). "Last year 287,000 illegal aliens were apprehended in the Tucson sector, and the U.S. Attorney's Office prosecuted almost 2,085 felony cases in the Tucson division, which is an increase of about 43.7 percent over 1997. One of our magistrate judges, on her first day on the job, had 41 prisoners presented for arraignment. If the cases ever jump to 3,000, where do we get the judges to handle the cases?"

King spent six days in April visiting the Texas border courts, asking questions and assessing the situation. She talked to judges, public defenders, probation and pretrial services officers, U.S. attorneys, lawyers with criminal and civil practices, the heads of Border Patrol sectors, and DEA, U.S. Customs and FBI agents. "I found a lot of heroes," said King. "People working night and day without complaint. The number of people dealing with staggering caseloads amazed me." That's when she came up with the idea for a southwest border courts conference. She approached the Administrative Office and the Federal Judicial Center for assistance in conducting a conference bringing together judges from throughout the region. "District and magistrate judges have developed techniques for dealing with the caseload volume, "said King. "Some techniques are very creative. Others could use improvement. The theory is to get the experts together and lift all boats."

The experts at this conference, to be held in February 2000, in Albuquerque, New Mexico, will be district court judges from the border divisions. Selected magistrate judges, chief probation and pretrial services officers, and the clerks of the district courts for the Southern District of California, the Western and Southern Districts of Texas, and the Districts of Arizona and New Mexico also will be invited. Kazen sees the conference as a specialized workshop. "It will be judges talking to judges. A dialogue session with small groups. We need to hear how everybody copes. Everyone has come up with different ways to deal with the inordinate

Actions Per Judgeship

12-months ended September 30, 1998

	Total Filings	Criminal Felony	Weighted Filings	Terminations	Trials Completed
All District Courts	**467**	**69**	**484**	**466**	**25**
Arizona	685	283	834	677	27
S. Calif.	791	467	1,006	844	49
N.M.	501	163	614	484	47
S. Tex.	517	161	567	512	46
W. Tex.	632	314	841	609	48

Source: Federal Court Management Statistics 1998

Attorney General Janet Reno, shown here being welcomed by Administrative Office Director Leonidas Ralph Mecham and Committee chair Judge Wm. Terrell Hodges, met with the Judicial Conference Executive Committee to discuss issues of mutual concern to the Judiciary and the Department of Justice. Among the items discussed was the serious problem of insufficient funding of the U.S. Marshals Service along the southwest border of the United States. The number of deputy marshals in the Southern and Western Districts of Texas has not increased since 1994, and to meet its responsibilities, the U.S.M.S now uses contractors to process new detainees, transport prisoners, and serve as guards. DOJ has created a Southwest Border Council to study the situation.

number of cases. We need to learn from each other."

King anticipates a conference that will deal with different management initiatives, how to reduce the mountain of paperwork that accompanies huge caseloads, and how to make the most of inadequate judicial resources. For example, how do courts provide enough interpreters, who work hour after hour in rotation in some courts? How do some courts find housing for detainees, some of whom must be transported to the court from hundreds of miles away? How do probation and pretrial services officers find criminal records of defendants with aliases in multiple jurisdictions? And while the number of defendants has mushroomed, there have been no new Article III judgeships created since 1990 and no increase in U.S. Marshals personnel in some of the border districts in years. Chief Judge Marilyn Huff (S. D. Calif.) and Chief Judge Harry Hudspeth (W. D. Tex.) both note the lack of new judgeships as a continuing problem. In Hudspeth's district, it took four years to fill the new judgeships created in 1990, an interminable delay in these hard-pressed courts. Huff relies on senior judges, all of whom are in their mid-80s, to meet the caseload. "Last year, a senior judge terminated 768 criminal cases, and just last week one of our senior judges held 11 sentencings and two trials," said Huff. "The district only survives with the assistance of our senior judges. But they're helping us voluntarily. In the long-term, we can't continue to depend so heavily on them. We need help." The Judicial Conference has recommended the creation of 16 new federal district judgeships in the five border districts, but Congress has yet to take final action.

Aware of the situation in the courts and in its own executive agencies operating along the border, the Department of Justice has formed a Southwest Border Council, with members drawn from the Border Patrol, DEA, FBI, U.S. attorneys, and U.S. Customs. The Council, which already has met several times, will eventually produce recommendations on ways to maximize allocation of Justice Department resources and coordinate agency efforts. While the Council is independent of any Judiciary border initiative, AO staff have attended Council meetings and will offer a Judiciary perspective on, and input to, final recommendations. A Council representative also will be invited to address the Judiciary's February conference.

"Huge law enforcement resources have been poured into this area in recent years," said King. "Since 1994, the number of Border Patrol agents has increased 99 percent; INS agents, 93 percent; and DEA agents, 155 percent. But we haven't looked at how this affects the Judiciary or how we should allocate our own existing resources. At the conference, we hope to look at some of these issues as well."

Legislation Moves Slowly as End of Session Nears

Only weeks away from the scheduled ending of the first session of the 106th Congress, the President signed an appropriations bill that is a typical vehicle for courthouse funding, and the House passed legislation affecting multidistrict, multiforum jurisdiction and class action jurisdiction. Other bills of interest to the Judiciary continued to inch their way through Congress.

PL. 106-58 | Treasury and General Government Appropriations Act, FY 2000

On September 29, the President signed H.R. 2490, a bill making appropriations for the Treasury Department, the U.S. Postal Service, the Executive Office of the President, and certain independent agencies, for the fiscal year ending September 30, 2000. The appropriations bill, which normally would be the vehicle for new courthouse construction funding, contains only funding for seven repair and alteration projects. For the third year in a row, the President's budget did not include a request for courthouse money, and Congress could not find the additional money to fund the program. The bill also contains language to retain fiscal year 1997 courthouse construction funds that were in danger of lapsing on September 30, 1999.

However, P.L. 106-58 contains a pay adjustment for rank and file federal employees effective in 2000, and a Presidential pay raise effective in 2001. It also clears the way for a 3.4 percent pay adjustment for members of Congress and top level executive branch leaders, since it does not contain language withholding the increase. Traditionally, when members of Congress have received pay adjustments they have not blocked similar pay adjustments for federal judges. Of course, for judges to receive a pay adjustment, Congress also must take the affirmative action of waiving section 140 of P.L. 97-92. That language is included in the Senate's fiscal year 2000 Departments of Commerce, Justice, and State, the Judiciary and Related Agencies Appropriations Act, which still awaits final approval.

H.R. 2112 | Multidistrict, Multiparty, Multiforum Jurisdiction Act of 1999

The House passed H.R. 2112 last month and sent it to the Senate for consideration. The bill, in part, is in response to the Supreme Court's

*See **Legislation** on page 6*

Legislation continued from page 5

decision in *Lexecon* and would amend section 1407 (the multidistrict litigation statute) of title 28 to allow a transferee court to retain jurisdiction over referred cases of a consolidated action for trial. The transferee court could also transfer the action to another district. The bill also creates a new section 1369 of title 28, which grants original jurisdiction to the federal courts over civil actions involving minimal diversity jurisdiction among adverse parties arising from a single accident involving at least 25 persons, each of whom must have sustained injuries of $75,000. This bill is supported by the Judicial Conference.

H.R. 1875 Interstate Class Action Jurisdiction Act of 1999
S. 353 Class Action Fairness Act of 1999

The House passed H.R. 1875, as amended, by a vote of 222 to 207. The bill would grant district courts original jurisdiction over any class action having minimal diversity, barring federal jurisdiction if the total of all aggregated claims does not exceed $1 million, or under certain additional, limited circumstances. In addition, any defendant, without the consent of the defendants, or any plaintiff who is not a named or representative class member, without the consent of all members of such class, could remove a class action to federal court. In the Senate, a class action bill, S. 353, is also pending but that bill has not yet been reported out of subcommittee. On behalf of the Judicial Conference, the Executive Committee has expressed opposition to the class action provisions in H.R. 1875 and S. 353 in their present form.

S. J. Res. 3 A joint resolution proposing an amendment to the Constitution of the United States to protect the rights of crime victims.

The Senate Judiciary Committee reported out S.J. Res. 3 and Committee chair Senator Orrin Hatch (R-UT) has indicated he would like to bring the resolution to the floor for a vote in this Congress. A similar Senate Victims' Rights Amendment was offered in the 105th Congress but that bill never went to the Senate floor for a vote. The Judicial Conference prefers a statutory approach to victims' rights over a constitutional amendment.

S. 254 / H.R. 1501 Juvenile Crime

The House and Senate bills were to be considered by a conference committee after the August recess, but gun control provisions have become a political flashpoint and slowed progress. Passage of a bill will depend upon an agreement on gun control. The Judicial Conference has taken no position on these bills but it opposes mandatory minimum sentencing, and has expressed concern over the growing trend to federalize offenses traditionally the responsibility of state criminal justice systems.

S. 1145 Judgeships

S. 1145, the Federal Judgeship Act of 1999, contains the Judicial Conference recommendation for the creation of 69 Article III judgeships. The bill was introduced by Senator Patrick Leahy (D-VT) in May, but even though the Administrative Office continues to impress upon committee members and staff the need for new judgeships, the Senate Judiciary Committee has yet to consider the bill.

Both the House and Senate juvenile justice bills contain three additional judgeships for the District of Arizona, four for the Middle District of Florida, and two for the Southern District of Florida.

S. 625, the Bankruptcy Reform Act of 1999, would create 18 temporary bankruptcy judgeships and extend temporary bankruptcy judgeships in five districts. It is now uncertain when, or if, S. 625 will come to a vote in this session.

Full Slate of Nominees for U.S. Sentencing Commission

Nominations have been received by the Senate for all seven commissioner vacancies on the seven-member U.S. Sentencing Commission, and on October 7 the Senate Judiciary Committee held a hearing to consider the nominations. The nominees are

Judge Diana E. Murphy (8th Cir.), for the remainder of the term expiring October 31, 1999, to replace Judge Richard P. Conaboy (M.D. Penn.), who resigned, for a term expiring October 31, 2005, and to be Chair of the U.S. Sentencing Commission, replacing Judge Richard P. Conaboy.

Judge Ruben Castillo (N.D. Ill.), for a term expiring October 31, 2003, to replace Michael Gelacak, whose term expired.

Judge Sterling R. Johnson, Jr. (E.D. N.Y.), for a term expiring October 31, 2001, to replace Judge Julie E. Carnes (N.D. Ga.), whose term expired.

Judge Joe Kendall (N.D. Tex.), for a term expiring October 31, 2001, to replace Judge David A. Mazzone (D. Mass.), whose term expired.

Michael O'Neill, assistant professor of law, George Mason University School of Law; for a term expiring October 31, 2003, to replace Judge Deanell Reece Tacha (10th Cir.), whose term expired.

Judge William Sessions, III (D. Vt.), for a term expiring October 31, 2003, to replace Michael Goldsmith, whose term expired.

John R. Steer, General Counsel of the Sentencing Commission, for the remainder of the term expiring October 31, 1999, to replace Wayne Anthony Budd, who resigned, and for a term expiring October 31, 2005.

November 1999 Program Calendar
for The Federal Judicial Television Network

All times are Eastern Standard Time

Advances in Drug Abuse and Addiction Research
Nov. 12, 12:30 p.m.; Nov. 18, 3:30 p.m.

All About the Circuit Executive's Office
Nov. 10, 3:30 p.m.; Nov. 18, 8:30 a.m.

The Architecture of Antitrust
Nov. 3, 10:00 a.m.; 1:00 p.m.; Nov. 17, 8:30, 11:30 a.m.; 2:30 p.m.

Assessment of Sex Offenders for Sentencing, Supervision, and Treatment (NIC/CSOM)
Nov. 18, 10:00 a.m.

Automated Document Production Program
Nov. 23, 1:00 p.m.; Nov. 29, 4:00 p.m.; Nov. 30, 2:00 p.m.

Avoiding Infectious Diseases
Nov. 9, 1:00 p.m. LIVE; Nov. 19, 11:30 a.m., 3:30 p.m.; Nov. 29, 12:30 p.m.

Basic Browser Usage
Nov. 8, 9:00 a.m.; Nov. 19, 12:30 p.m.; Nov. 22, 11:30 a.m.

Civil Service Retirement System
Nov. 19, 8:30 a.m.

Coaching for Optimal Performance
Nov. 4, 1:00 p.m. LIVE

Contests and Competitions as Instructional Tools, Part Two
Nov. 18, 1:00 p.m. LIVE

Court to Court (October 1999)
Nov. 4, 4:00 p.m.; Nov. 10, 8:30, 10:00, 11:30 a.m.; Nov. 17, 4:00 p.m.

Court Personnel System (court employees)
Nov. 1, 2:00 p.m.; Nov. 5, 9:30 a.m. ; Nov. 30, 9:30 a.m.

Court Personnel System (judges)
Nov. 2, 4:00 p.m.; Nov. 5, 10:00 a.m.; Nov. 30, 10:00 a.m.

Courtroom Technologies
Nov. 22, 2:30 p.m.; Nov. 29, 1:30 p.m.; Nov. 30, 4:00 p.m.

EDR Procedural Overview
Nov. 23, 2:00 p.m.

EDR Substantive Overview
Nov. 23, 3:00 p.m.

Executive Briefing: Travel Regulations
Nov. 9, 11:00 a.m.; Nov. 23, 4:00 p.m.

Federal Employees Retirement System (FERS)
Nov. 19, 10:00 a.m.

Federal Retirement Benefits for Court Personnel—Frequently Asked Questions
Nov. 15, 2:00 p.m.; Nov. 22, 1:30 p.m.; Nov. 30, 11:30 a.m.

Furniture and Furnishings Acquisition
Nov. 22, 10:00 a.m.; Nov. 29, 9:00 a.m.

Home Confinement
Nov. 30, 1:00 p.m. LIVE

In Camera
Every Monday at 8:30 a.m.; every Tuesday at 4:30 p.m.

Influencing with Integrity
Nov. 10, 12:55 p.m. LIVE

Introduction to Case Management and Electronic Case Filing
Nov. 1, 11:00 a.m.; Nov. 8, 3:00 p.m.

Introduction to NCIC 2000
Nov. 9, 8:30 a.m.

Judiciary Benefits Initiative: Announcement of the Judiciary's Long-Term Care Insurance Plan
Nov. 2, 8:30 a.m.; Nov. 9, 11:30 a.m.; Nov. 30, 10:30 a.m.

Judiciary Benefits Initiative: Flexible Spending Accounts
Nov. 1, 10:00 a.m.; Nov. 5, 8:30 a.m.

Judiciary Benefits Initiative: Long-Term Care—Plan Considerations
Nov. 15, 1:00 p.m.; Nov. 16, 3:30 p.m.

Judiciary Benefits Initiative: Long-Term Care—Update and Introduction to Flexible Benefit Plans
Nov. 9, 3:30 p.m.; Nov. 22, 9:00 a.m.

Judiciary Benefits Initiative: Supplemental Benefits
Nov. 16, 1:00 p.m. LIVE; Nov. 23, 10:30 a.m.; Nov. 30, 3:00 p.m.

Managing Generation X
Nov. 12, 2:30 p.m.

Neurobiology of Addiction
Nov. 12, 8:30 a.m.

New Federal Court Reporter Orientation
Nov. 1, 12:30 p.m.; Nov. 9, 2:00 p.m.; Nov. 16, 2:00 p.m.

An Overview of the Federal Employees Health Benefits
Nov. 2, 11:30 a.m.; Nov. 5, 3:30 p.m.; Nov. 8, 1:00 p.m.; Nov. 16, 8:30 a.m.; Nov. 23, 9:30 a.m.; Nov. 30, 8:30 a.m.

Pharmacology of Drugs of Abuse
Nov. 12, 10:30 a.m.

Pretrial Services Investigations and Reports Training
Nov. 1, 2:30 p.m.; Nov. 15, 9:00 a.m.; Nov. 29, 2:00 p.m.

Prison Litigation Reform Act Update
Nov. 3, 8:30, 11:30 a.m.; 3:00 p.m.; Nov. 17, 10:00 a.m.; 1:00 p.m.

Restitution: Determining Victims and Harms
Nov. 4, 8:30 a.m.

Review of Travel Regulations for Support Staff
Nov. 23, 11:30 a.m.

Space and Facilities Courthouse Projects, Programs A & B
Nov. 15, 11:00 a.m.; Nov. 29, 10:30 a.m.

Supervising Individuals with a Dual Diagnosis
Nov. 2, 1:00 p.m. LIVE; Nov. 5, 12:30 p.m.; Nov. 8, 2:00 p.m.; Nov. 16, 11:30 a.m.; Nov. 23, 8:30 a.m.

Supreme Court 1998-99: The Term in Review, Parts One, Two, and Three
Nov. 4, 11:00 a.m.

Using Knowledge Management in Your Court
Nov. 1, 9:00 a.m.

WordPerfect 8.0 Basics
Nov. 8, 11:00 a.m.; Nov. 22, 3:00 p.m.

WordPerfect 6.1 to 8.0 Transition
Nov. 15, 3:00 p.m.

WordPerfect File Management
Nov. 2, 9:30 a.m.; Nov. 5, 10:30 a.m.; Nov. 16, 9:30 a.m.

WordPerfect Templates
Nov. 2, 2:00 p.m.; Nov. 5, 1:30 p.m.

CALENDAR DATES FOR
THE THIRD BRANCH

Vol. 31 Number 10 October 1999

NOVEMBER

8-9 **Monday-Tuesday**
Committee on Judicial Branch

8-10 **Monday-Wednesday**
National Workshop for Magistrate Judges II

12-14 **Friday-Sunday**
Court of Federal Claims Workshop

15-19 **Monday-Friday**
Phase II Orientation for District Judges

DECEMBER

1-3 **Wednesday-Friday**
Committee on Security and Facilities

2-3 **Thursday-Friday**
Committee on Court Administration and Case Management

8-9 **Wednesday-Thursday**
Committee on Judicial Resources

8-10 **Wednesday-Friday**
Committee on Defender Services

9-10 **Thursday-Friday**
Committee on the Administration of the Magistrate Judges System

9-10 **Thursday-Friday**
Committee on the Administrative Office

14-15 **Tuesday-Wednesday**
Committee on Criminal Law

14-15 **Tuesday-Wednesday**
Committee on International Judicial Relations

14-16 **Tuesday-Thursday**
Committee on Automation and Technology

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH

Vol. 31 Number 10 October 1999

CHIEF CIRCUIT MEDIATOR, U.S. Court of Appeals, Fourth Circuit

The focus of the mediation program is the settlement of civil cases. Applicants must be graduates of an accredited law school, be admitted to practice before the highest court of a state or territory of the United States, have knowledge of and experience working with the Federal Rules of Civil Procedure and the Federal Rules of Appellate Procedure, and possess substantial legal analytical skills and aptitude for collaborative problem solving and consensus building. At least 10 years of post-graduate experience, a substantial portion of which involved trial and appellate work, either or both, as a judge or litigator in state or federal courts is required. Actual mediation or arbitration experience and training also are useful. Salary: $92,844 to $117,198, annually depending upon experience. Application may be made by sending five copies of a resume and supporting documentation evidencing an applicant's qualifications to: Samuel W. Phillips, Circuit Executive, United States Court of Appeals for the Fourth Circuit, 1100 East Main Street, Suite 617, Richmond, VA 23219-3517. **Application deadline: Monday, November 1, 1999.**

CHIEF DEPUTY CLERK, U.S. Bankruptcy Court for the Eastern District of Virginia, Richmond.

Six years of progressively responsible professional, administrative or managerial experience is required with strong oral and written communication skills; good project management experience; and a working knowledge of personnel administration, budget, finance, and space and facilities. A good knowledge of automation, court or legal experience; and a college degree in a related field is preferred. Salary: JSP 16 ($93,493 - $118,017). Submit resume, cover letter, salary history, references and writing sample to William C. Redden, Clerk, Attn: Chief Deputy Vacancy, U.S. Bankruptcy Court, 1100 E. Main Street, Rm. 310, Richmond, VA 23219. **Application deadline: November 19, 1999**

BANKRUPTCY JUDGE, Tenth Circuit

The U.S. Court of Appeals for the Tenth Circuit seeks applications from highly qualified candidates for a 14-year appointment as bankruptcy judge for the District of Kansas at Wichita, to fill a vacancy that will occur May 21, 2000. Current salary: $125,764. Application forms may be obtained by writing Robert L. Hoecker, Circuit Executive, Byron White U.S. Courthouse, Denver, CO 80257, or by calling (303) 844-2073. **Application deadline: December 30, 1999.**

EQUAL OPPORTUNITY EMPLOYERS

New Case Management System Under Development

Federal courts nationwide are several steps closer to a new case management system with electronic case files capabilities. A prototype system (CM/ECF) now in use in nine bankruptcy and district courts has been approved for further development, and a nationwide roll-out is anticipated over the next four years.

Case management systems do just that: they enable court staff to manage the court's cases from the filing of the case to termination, keeping track of all court processes in the litigation. The goal is just, speedy, and efficient resolution of disputes. The new CM/ECF system developed by the Administrative Office will replace a number of out-dated and hard-to-maintain case management systems now used by the courts. Unlike the old technology, this next-generation system will provide not only case management, but also electronic case files and electronic filing capabilities.

"A goal of the project is to allow court staff to share information and easily upload information from the district courts to the appellate courts, or from bankruptcy courts to district courts," said Mary Stickney, the CM/ECF Deputy Project Manager. "It has a familiar web-browser interface, so users won't have to memorize a lot of codes in order to use the CM/ECF system. They also will be able to easily view and move between screens." The system's capabilities include the ability to store and secure electronic documents, send electronic notices, and retrieve electronic case file documents.

The electronic case files capabilities allow, but do not require, courts to receive and maintain case files in electronic form. A court may choose its own pace in implementing the electronic case files portion of the application. For example, it may use only the case management portion of the new software and continue as a paper-only operation. Or it may choose to scan images of paper documents or to receive documents on diskette or by way of the Internet so that an electronic case file is maintained. A court also may permit attorneys to submit electronic documents through the Internet and create the docket entries as part of that submission process.

As a web-based system, CM/ECF will allow access to documents immediately and simultaneously, from inside via the court's network or as appropriate from outside the court via the Internet. However, a court can limit access to any document, making it totally inaccessible or accessible only to certain groups, such as court staff or participants in a case.

The District Court for the Northern District of Ohio was one of the first courts to test the CM/ECF prototype. The court has used the system since 1996 to handle an unusually large maritime asbestos caseload that had, at one point, 10,000 pleadings filed weekly, and now handles over 16,000 cases per year.

*See **Caseload** on page 9*

Privacy & Access to Electronic Case Files

The Judiciary has a long tradition of open access to public court records, and, typically, paper copies of case files are available at the courthouse for anyone who wishes to see them. But the ability to provide unlimited electronic access to those files raises some new questions. Some people question the difference between permitting the public to view a document such as a tax return over the counter in the clerk's office and permitting the public to view the tax return via the Internet. But it may be appropriate to protect certain private or sensitive information from electronic dissemination, including arrest warrants and presentence investigation reports, medical reports, tax returns, employment records, personal financial information in bankruptcy cases, and certain records in Social Security cases.

The Supreme Court has recognized that access rights are not absolute, and that technology may affect the balance between access rights and privacy interests. Congress also is concerned with the effect of technology on privacy and is considering legislative proposals to shield sensitive personal information from unwarranted disclosure. In the meantime, judges will continue to address privacy issues on a case-by-case basis. To assist, the Administrative Office is providing software, as part of the electronic case files feature of CM/ECF, that allows courts to limit access to files on both a case-by-case and document-by-document basis. A subcommittee of the Judicial Conference Court Administration and Case Management Committee, with representatives from other Conference committees, has been asked to review privacy issues and consider appropriate policies, along with guidance to designers of electronic case file systems, for Conference consideration.

JUDICIAL MILESTONES

Appointed: Charles R. Wilson, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Eleventh Circuit, September 13.

Appointed: William Haskell Alsup, as U.S. District Judge, U.S. District Court for the Northern District of California, August 17.

Appointed: Gary Feess, as U.S. District Judge, U.S. District Court for the Central District of California, September 3.

Appointed: Karen E. Schreier, as U.S. District Judge, U.S. District Court for the District of South Dakota, August 13.

Appointed: Stefan R. Underhill, as U.S. District Judge, U.S. District Court for the District of Connecticut, September 1.

Elevated: Judge Orinda Evans, to Chief Judge, U.S. District Court for the Northern District of Georgia, succeeding G. Ernest Tidwell, September 1.

Elevated: Judge Raymond L. Finch, to Chief Judge, U.S. District Court for the District of the Virgin Islands, succeeding Thomas K. Moore, August 15.

Elevated: Judge N. Carlton Tilley, Jr., to Chief Judge, U.S. District Court for the Middle District of North Carolina, succeeding Frank W. Bullock, Jr., September 22.

Elevated: Judge Thomas I. Vanaskie, to Chief Judge, U.S. District Court for the Middle District of Pennsylvania, September 1.

Elevated: Bankruptcy Judge Paul Kilburg, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Northern District of Iowa, succeeding William L. Edmonds, August 18.

Retired: Bankruptcy Judge Harold C. Abramson, U.S. Bankruptcy Court for the Northern District of Texas, September 19.

Retired: Bankruptcy Judge Marvin A. Holland, U.S. Bankruptcy Court for the Eastern District of New York, September 9.

Retired: Bankruptcy Judge Alexander L. Paskay, U.S. Bankruptcy Court for the Middle District of Florida, September 12.

Retired: Magistrate Judge William R. Penix, III, U.S. District Court for the Eastern District of Arkansas, April 30.

Retired: Magistrate Judge Gerald I. Rushfelt, U.S. District Court for the District of Kansas, September 8.

Deceased: Judge Sam J. Ervin, III, U.S. Court of Appeals for the Fourth Circuit, September 18.

Deceased: Judge Almeric L. Christian, U.S. District Court for the Virgin Islands, September 1.

Deceased: Senior Judge Richard C. Freeman, U.S. District Court for the Northern District of Georgia, August 26.

Deceased: Judge W. Arthur Garrity, Jr., U.S. District Court for the District of Massachusetts, September 16.

Deceased: Judge Stanley A. Weigel, U.S. District Court for the Northern District of California, September 1.

Deceased: Bankruptcy Judge Richard N. Degunther, U.S. Bankruptcy Court for the Northern District of Illinois, September 2.

THE THIRD BRANCH

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Photograph on page 12 by Franz Jantzen, Collection of the Supreme Court of the United States.

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JUDICIAL BOXSCORE

As of October 1, 1999

Courts of Appeals	
Vacancies	25
Nominees	20
District Courts	
Vacancies	38
Nominees	27
Court of International Trade	
Vacancies	1
Nominees	1
Courts with Judicial Emergencies	22

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Judiciary Prepares Y2K Continuity Plans

The Judiciary is preparing for Y2K like it is a natural—but avoidable—disaster. Preventive steps are being taken now, and continuity planning will help minimize any service interruptions later. According to Howard Grandier, Y2K Program Manager at the Administrative Office, the federal Judiciary is prepared for January 1, 2000, and especially January 3, when employees return to work in the new millennium. "The vast majority of courts have implemented the Y2K versions of their nationally supported computer applications," said Grandier, "and nearly all court-developed software programs have been checked and are Y2K compliant. But we're still asking courts to make back-up plans to conduct business just in case court computers or outside systems are disrupted."

It is impossible to be certain all computers will function perfectly as the year rolls over to 2000. For example, the Judiciary regularly interacts with the computer systems of the General Services Administration, the Treasury Department, and Social Security Administration. Y2K incompatibilities in any of these systems, in court programs infected with bad data, or even in the computer systems of local power companies could be overlooked and result in an interruption of service. Back-up or continuity plans address that possibility.

Courts are asked to consider what services or products customers would miss most in the event of any system failure—and then develop workable alternatives to guarantee there is no interruption in these critical services. Information on Y2K business continuity plans is available to all courts on the Judiciary's internal Y2K website.

Caseload *continued from page 7*

"We've had good reports from the attorneys who've used the new CM/ECF system," said Chief Judge Paul R. Matia (N.D. Ohio), "and it definitely cuts down on the notification of court entries. Because of its savings to the court, we may be able to deal with increased caseloads without putting on additional personnel."

As of September 1999, the CM/ECF prototype system also has been in operation in the district courts for the Western District of Missouri, the Eastern District of New York, and District of Oregon, and in the bankruptcy courts for the Southern District of New York, the District of Arizona, the Southern District of California, the Northern District of Georgia, and the Eastern District of Virginia. These courts manage nearly 15,000 cases and 150,000 documents using CM/ECF. More than 2,000 attorneys have been trained to use the system, of which 1,000 have already filed documents over the Internet and generated docket entries. Next year, additional courts will assist with testing the implementation process. Two appellate courts have been selected and each is expected to have prototype software available early in the year 2000. Present plans call for bankruptcy and district courts to begin receiving the CM/ECF system beginning in mid-2000 and continuing until delivery is completed by late 2003.

INTERVIEW

Senator Thad Cochran

An Interview With Senator Thad Cochran

Thad Cochran is the senior U.S. Senator from Mississippi. He chairs Appropriations and Governmental Affairs Subcommittees and has served on the Senate Judiciary Committee.

Q: The Judiciary has many reasons to be deeply appreciative of your long-standing support on many issues—the most recent reason being your introduction of S. 1564, the Federal Courts Budget Protection Act, which would allow the federal Judiciary to submit its annual budget directly to Congress, bypassing the Office of Management and Budget. This also would include submitting our request for court facility construction projects directly to Congress. How did courthouses come to be included in the legislation?

A: Well, this problem was brought to my attention in a visit with Judge Roth from Delaware. She came to see me with someone from the office of federal courts. I was impressed with the fact that it seemed to me an indirect way for the Administration to actually block access by the Congress to information from

See ***Interview*** *on next page*

the Judiciary about its priorities for courthouse construction, where it thought the needs were the most important. And, this is information that I thought the Congress had a right to have. It didn't have to approve every request that either the Judiciary or the Administration makes for funds for courthouse construction, but it needed to know where the courts thought the priorities were. So, I thought it was an interference, a gratuitous interference, by the executive branch in the effort by the Judiciary to communicate with the Congress, and it ought not be tolerated.

Q: The OMB has not agreed to include funding for courthouses in the last three General Services Administration budgets, which has effectively halted our courthouse construction program. What role should OMB be playing in the recommendation of courthouse funding?

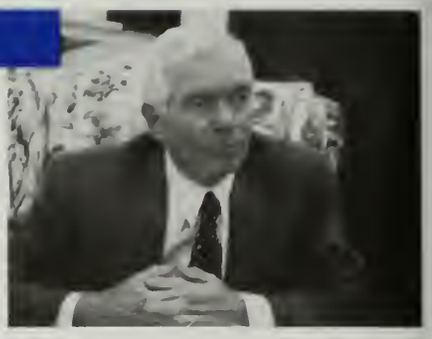
A: The committee that has jurisdiction over authorizing courthouse construction feels that OMB is helpful in the deliberations of the committee by giving its recommendations and its response to the Judiciary's request. But, it seems to me that it goes further than that, in that the Congress tends to use OMB as an excuse for not approving requests from the Judiciary. Therefore, I think some high priority requests are not going to be approved if Congress continues to recognize OMB's decision as more important than the recommendation of the Judiciary.

Q: Through your work on the Senate Appropriations Committee, you're familiar with the fiscal year 2000 budget problems and how funding shortfalls will affect Judiciary staffing and services. Is there an expectation on your part that adequate funding will be found for the Judiciary before the appropriations bills are signed by the President?

A: I can't predict. There's a very high profile confrontation that we're going through right now with the Administration over how to identify the priorities, and what to use as a cap on spending under the Balanced Budget Act. This budget process has turned into an exercise of political one-ups-manship for this Administration and this Congress. It is an unfortunate situation, and I think it has potential for real harm in the budget process if we continue to see the process deteriorate like we have in the last few years. Now you can lay blame wherever you choose, but I think this Administration has gotten to the point that they can't be trusted to keep their word on an agreement with respect to the budget process. There's absolutely no credibility left on matters of appropriations and spending priorities. It's a very unfortunate situation. In that environment, its impossible to predict what any level of spending is going to be that will be approved and signed by the Administration, or that would pass Congress on any subject at all.

Q: How do we change that?

A: We continue to work our way through the process. I'm not saying that it's necessarily different from other confrontations in other Administrations. I can remember President Reagan and Tip O'Neil having a lot of confrontations and knock-down drag-out battles over the budget. So did President Nixon in the Democratic Congress, who passed the Budget and Impoundment Control

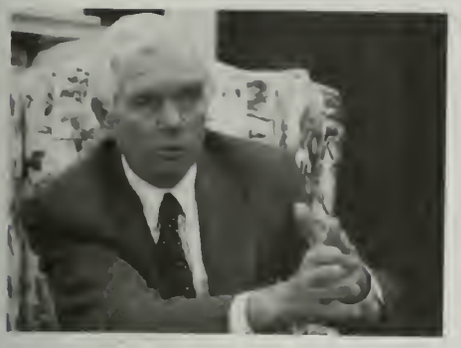


Act of 1974, that was designed to embarrass the President. And, frankly, President Nixon wasn't doing anything that Presidents John Kennedy or Lyndon Johnson hadn't done with respect to withholding expenditures of funds that they thought Congress appropriated in amounts higher than justified, whether it was transportation or other areas.

There's been a long-standing, running battle over spending priorities between the executive branch and the Congress. The Judiciary just happens to get caught in the middle on this. It's a co-equal branch of government, but it has no power to appropriate or to spend money that's not approved by Congress and the executive branch. So the Judiciary has to get used to the idea that it is without the power to tax or spend. The Constitution gives that power to Congress and so the Judiciary has to respect that. It may be tough some times, but that's just a fact.

Q: Do you think it would help if the Judiciary's budget were submitted separately from other agencies? As you know, it is now submitted with the budgets of the Departments of Commerce, State, Justice and other related agencies.

A: Well the budget is presented every year. I know when I was on the Senate Commerce, State, Justice Appropriations Subcommittee, we would have a hearing at which we received the proposal of the Judiciary. Charles Clark, who had been asked by Chief Justice



Burger, I guess to be the Chairman of the Budget Committee for the Judiciary, would actually appear before our Subcommittee and present the budget of the Judiciary. And I think that process continues today.

What we are talking about and what this subject concerns is the budget for courthouse construction. It's not really the total budget of the Judiciary. I think we should continue to consider whatever the proposal is of the Judiciary for courthouse construction. You can make it a part of the Judiciary's proposal. I don't think OMB has the power to prevent the Judiciary from presenting whatever proposal it wants to Congress. The Judiciary doesn't work for the OMB. The OMB works for the President. The President doesn't control the intra-Judiciary deliberations on the budget that the Judiciary submits. Sure you have to send it to the President if they ask for it. I'd go on and send it to them. But also send a copy to the Congress. I don't see anything wrong with that. And if Congress wants to consider it, it may. Some of us think it's important to consider it. If I were chairman of the appropriations subcommittee, I would consider it. If I were chairman of the legislative authorizing committee, in the position that John Chafee holds, I would consider it. There's no rule or law against our consideration of it.

Q: Under the current budget caps, the House and Senate are holding the Judiciary to a fiscal year 2000 budget that will create a severe budgetary shortfall. Will the budget caps hold?

A: I don't think you should wait for budget caps to be busted, because I don't think they are going to be busted. We are going to see an appropriations process that complies with the Budget Act in all respects. There are provisions in the Budget Act that allow for expenditures of funds based on emergency need. We've had a number of emergencies in this fiscal year, and we will in the next fiscal year, which could be exempted from the limitations of the Budget Act on the basis that they were emergencies or that the spending occurred because it was an emergency. Some of those expenditures have already been made, but there's nothing to prevent the executive branch and Congress from agreeing that those were for emergency purposes and not subject to the caps. I think you're going to get into trouble if you're going to rely on pressure imposed on Congress, however directly or indirectly, to ignore the caps. The caps are in law, not only passed by Congress, but signed by the President, and so I think we have every right to expect both Congress and the President to live up to the Balanced Budget Act.

If there are provisions in that law that should be amended, that is something that could be considered. But we ought to get away from this business of just assuming that the caps have to be ignored. I don't think they will be ignored. I think they have served a useful purpose of focusing the attention of all those involved in the process of deciding how much to spend for what and forcing hard choices to be made. If we're going to have a balanced budget, if we're going to keep from over-spending, we've got to have that extra discipline.

Q: As a member of the Committee on Governmental Affairs, your jurisdiction includes the compensation and benefits of officers and employees of the United States. As you know, federal judges and members of Congress have had only one cost-of-living adjustment since 1993. How do you think this affects both groups and what can be done to remedy this?

A: As most people here know, I've been pushing for increases in pay for judges for some time now. It's really a shame that their pay has been held at such a low level. We're having a very hard time attracting judicial candidates because of the low pay. You just about have to find somebody who is independently wealthy, whose children are already out of college, and where other circumstances are just right from a financial point of view in order for them to consider accepting a invitation to serve in the Judiciary. And that's unfortunate. The same thing happens to congressional candidates as well. But I think it's a more serious problem with respect to judges. There seem to be more volunteers for people to run for Congress, who are qualified and who are capable of serving well. But for judges you are really looking for a special kind of person who's not only gifted intellectually, by virtue of experience as a lawyer or an academician, but who has the right kind of temperament.

There are some very important considerations in judicial selection, and it's a shame to be limited to such a narrow group of potential candidates because of the salary situation. I'm very disturbed about that problem. I'll continue to work to see that those salary levels are increased. I'm hopeful that we are at that point now because there is a cost-of-living adjustment included in this year's budget for Members of Congress and the Judiciary. Maybe we're reaching a point where people will consider it appropriate to have an increase in salary, not just a cost-of-living adjustment. It's long overdue.

Judicial Conference of the United States, September 16, 1999

Seated: *(L to R) Chief Judge Juan R. Torruella (1st Cir.); Chief Judge Ralph K. Winter, Jr. (2nd Cir.); Chief Judge Edward R. Becker (3rd Cir.); Chief Judge J. Harvie Wilkinson III (4th Cir.); Chief Justice William H. Rehnquist; Chief Judge Carolyn Dineen King (5th Cir.); Chief Judge Boyce F. Martin, Jr. (6th Cir.); Chief Judge Richard A. Posner (7th Cir.); Chief Judge Roger L. Wollman (8th Cir.)*

Standing, Second Row: *(L to R) Judge Joseph A. DiClerico, Jr. (D. N.H.); Chief Judge Charles P. Sifton (E. D. N.Y.); Chief Judge Donald E. Ziegler (W. D. Penn); Judge Laurence H. Silberman, (D.C. Cir.) (substituting for Chief Judge Harry T. Edwards); Chief Judge Haldane Robert Mayer (Fed. Cir.); Chief Judge Procter R. Hug, Jr. (9th Cir.); Chief Judge Stephanie K. Seymour (10th Cir.); Chief Judge R. Lanier Anderson (11th Cir.); Chief Judge Charles H. Haden II (S. D. W.Va.); Judge Hayden W. Head, Jr. (S. D. Tex.)*

Standing, Third Row: *(L to R) Judge Robert L. Miller, Jr. (N.D. Ind.); Judge Thomas A. Wiseman, Jr. (M.D. Tenn.); Judge Lloyd D. George (D. Nev.); Judge Ralph G. Thompson (W. D. Okla.); Judge James M. Rosenbaum (D. Minn.); Judge Wm. Terrell Hodges (M.D. Fla.); Chief Judge Norma H. Johnson (D. D.C.); Chief Judge Gregory W. Carman, (Int'l Trade); Leonidas Ralph Mecham, Director, AOUSC.*

THE THIRD BRANCH

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Eye of Experience Tells on Security Details

A courthouse visitor carefully empties his pockets and clears the metal detector. An attorney hands over a holstered firearm and two small pocket knives but continues to set off the metal detector as he walks through. A father attending his son's sentencing brings two small Allen wrenches to court that he claims open his locker at work. A state court prisoner escapes and is pursued to the federal courthouse by sheriff's deputies. A man sentenced by a judge appears in his chambers.

Are these just everyday incidents or security concerns? Sometimes only experience can tell the difference. In the first incident, the visitor's care in depositing his belongings was intended to prevent detection of a small handgun concealed under his wallet. The court security officer (CSO) on duty at the metal detector caught the subterfuge. The attorney's ploy in declaring one handgun was to distract attention from a smaller loaded handgun concealed in the small of his back. Officer persistence found the gun. Experienced CSOs also knew the father's Allen wrenches could open handcuffs and were probably intended to help the man's son escape. Notified of the prisoner pursuit by a CSO perimeter patrol, and of shots being fired, officers inside the courthouse immediately secured the entrances and exits, safeguarding people in the courthouse. And in the final case, when the duress alarm was received from the judge's chambers, CSOs and deputies quietly approached and finally escorted the man from the building, without further incident.

Court Security Officers are the trained eyes on duty in our courts. Their experience is the first defense against trouble.

*See **CSO** on page 2*

White House Veto Returns Judiciary Budget to Negotiations

As expected, on October 25 the President vetoed the House- and Senate-passed conference report on the fiscal year 2000 Commerce, Justice, and State, the Judiciary and related agencies appropriations bill.

The President, in a statement to the House, appeared to reject the bill for a number of reasons, none of which touched on the Judiciary's appropriation. Congressional leaders and the White House began meetings to craft a bill that all sides approve.

However, with the concerned agencies' budgetary authority due to expire on October 29, Congress passed a continuing resolution extending through November 5th. Subsequently, three more continuing resolutions were passed, while budget talks continued. As of press time, when Congress adjourned for the Veterans' Day Holiday, the Judiciary still was operating under a continuing resolution but a final budget was expected to be completed by the end of November. Details of the budget and the Judiciary's appro-

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"CSOs bring a trained eye and experience to the table," said Judge Jane R. Roth (3rd Cir.), chair of the Judicial Conference Committee on Security and Facilities. "Their prior experience in law enforcement gives them an expertise in which response is second nature. They catch trouble before it happens. That is the experience we depend on."

The CSOs who fill the approximately 3,200 contractor positions in federal courthouses across the country must be graduates of certified federal, state, county, military or local law enforcement training programs. They also must have at least three years' job experience in law enforcement and have passed an approved firearms course, but most officers have considerably more experience, in fact entire careers, in the field. They are the guard force at federal court facilities, with responsibilities that range from security screening, and monitoring security equipment, to providing roving patrols and courtroom security for low level court proceedings.

Conscious of the importance of this force, the U. S. Marshals Service (USMS), with the Judiciary, has initiated several programs to increase the CSOs' effectiveness, including in-district orientations with automated programs, and centralized training. Fitness standards also are being reviewed.

Officers attend overview sessions at centrally located conference centers. The programs are cost efficient and can be scheduled to accommodate different schedules. This training is provided by staff from the Federal Law Enforcement Training Center, in Glynco, Georgia.

All new CSOs must complete the in-district orientation program. They must also be familiar with the USMS's firearms policy, trial security levels, standard operating procedures and decorum for courtrooms, screening identification and x-ray interpretation, threat recognition, and searches.

The USMS and the Administrative Office are working to produce a video about CSO courtroom duties. Officers also will benefit from biological and chemical response training now underway for deputy marshals, who in turn prepare them and court staff for possible incidents.

The final major initiative addresses CSO fitness for duty. The current contract requires that a court security officer have an initial physical examination prior to reporting for duty and each year thereafter. The Judicial Conference Committee on Security and Facilities has endorsed a proposal by the USMS to establish a national network of government-designated physicians to perform the physical exams for CSOs. The Immigration and Naturalization Service is in the process of awarding a national contract for a similar network, and an agreement is nearly final that will allow its designated physicians to perform these physical examinations. The shift to government-designated physicians will bring consistency to the physical examination screening process, guaranteeing a standard of fitness for all CSOs. Medical officers from the U.S. Public Health Service's Federal Occupational Health, Federal Law Enforcement Medical Programs Division will review the CSO physical examination results to ensure that medical standards are properly applied and consistent with the terms of the contracts.

To evaluate the existing medical standards, CSOs at five representative district courts have completed questionnaires on their duties and responsibilities. Staff from the Public Health Service have visited the courts to observe the officers' daily routine and evaluate the physical requirements needed to perform the duties. They also have interviewed federal judges and U.S. Marshals in the five districts.

Last month, an off-duty officer was wounded by a sniper when he attempted to assist two deputy sheriffs who had responded to a fake 911 call by the gunman and were killed. "The CSO's response is what we would expect," said Judge John R. Gibson (8th Cir.), chair of the Conference Committee on Security and Facilities Security Subcommittee. "The CSOs are professionals whose background and experience are the bulwark of our security at our courthouses."

Study to Look at Court Security

The growth in and complexity of Judiciary security, with the associated costs, have prompted the Judiciary to assess how security-related services are provided to the federal courts. Under the direction of the Committee on Security and Facilities, a two-phase study by an independent contractor will review current security standards, policies, and procedures to determine if there are better ways to provide effective, efficient, and uniform security for all federal court facilities.

The study will look at interior and exterior physical security at federal court facilities, after-hours and 24-hour security coverage, courtroom security, and the Court Security Officer program. The study will also assess different approaches to providing security guard services for court facilities.

Currently, the responsibility for providing security-related services to the federal Judiciary is vested in the Department of Justice's U.S. Marshals Service, and the General Services Administration's Federal Protective Service. The Court Security Officer program is a contractor service administered through the USMS and funded by the Judiciary. The study will evaluate whether or not there are more cost-effective ways of providing security guard services.

Budget continued from page 1

priation will be in the December *Third Branch*.

In the last week of October, conferees on the last appropriations bill, the District of Columbia and Labor–Health and Human Services appropriations bill, attached an amendment that would reduce discretionary spending in all appropriations bills passed this year by 0.97 percent. This includes all Judiciary spending, except for Article III and bankruptcy judges' compensation. Judiciary funding would be reduced by nearly $28 million from our appropriations for FY 2000, which is already $58 million below the Judiciary's appeal, or $86 million below our basic needs. The President had threatened to veto the bill, and it also was uncertain if the 0.97 percent reduction would hold, or if a smaller reduction would be substituted.

Administrative Office Director Leonidas Ralph Mecham already has written to congressional leaders urging that the Judiciary be exempted from the reduction. An exemption precedent was set several years ago with the FY 96 budget. At the time, Congress passed a measure providing funding for 17 separate programs, including the Judiciary and the law-enforcement component of the Department of Justice. That action had been preceded by a partial government shutdown.

The proposed 3.4 percent cost-of-living adjustment for federal judges appears to remain intact. The original language of the Commerce, Justice, and State, the Judiciary appropriations conference report contained the affirmative action by Congress required by Section 140 of P.L. 97-92 to give federal judges a cost-of-living adjustment in 2000. At press time, the proposed across-the-board reduction that would lower congressional salaries by 0.97 percent, after first adding a planned 3.4 percent COLA, had not been applied to judicial salaries.

The original FY 2000 conference report had contained encouraging news for the Judiciary. Usually, the House-Senate conferees split the difference between funding levels. But conferees increased the Judiciary's overall budget by about $60 million over the House figure of $3.9 billion and $145 million over the lower Senate figure. The Judiciary had requested $125 million over the House level, but in light of the extremely tight fiscal climate and the reluctance of Congress to break the spending caps, the conference report increase was remarkable.

The combined appeals of the Chief Justice, the Judicial Conference and its Budget Committee, numerous judges, AO Director Mecham, AO staff, and friends of the Judiciary in Congress were required to convince conferees of the need for additional funding. The Chief Justice wrote to Congress in August urging members to provide the necessary funding. Conferees returned from their August recess to find a letter from Judge John G. Heyburn (W. D. Ky.) chair of the Judicial Conference Budget Committee, and Mecham asking them to provide a funding level higher than either the House or Senate bill. In the intervening weeks, Mecham and AO staff continued to warn congressional staff of the serious impact underfunding would have on the Judiciary.

At the prior Senate and House marks, the Judiciary would have faced significant reductions in staffing levels, the consequences of which would have been felt throughout the court system, from civil, criminal and bankruptcy proceedings to the supervision of released felons. Unlike other federal branches, wholesale budgetary economies in the Judiciary cannot be made by curtailing or eliminating programs. The Judiciary's workload is set by Congress and dictated by the number of cases filed, and its "programs" are the court services that manage those cases from filing through to termination, and afterward in the supervision of offenders.

Director's Awards Nominations Sought

Do you know someone whose efforts have made a difference in your court? Give them the recognition they deserve and nominate them for a 2000 Director's Award.

The Director's Award for **Excellence in Court Operations** recognizes employees whose efforts have improved the function of the courts. The Director's Award for **Outstanding Leadership** recognizes managerial employees who have made long-term contributions to the administration of the federal Judiciary.

In the past, awards have recognized Judiciary employees who have, among other accomplishments, introduced new substance abuse monitoring techniques; trained court personnel to be more effective partners in construction projects; led pilot programs in case management; adopted the first automated docketing system in an appellate court; and developed an imaging program for scanning court documents into electronic form.

Nomination forms will be sent to all payroll certifying officers for distribution to Judiciary personnel. Nominations must be received by the Administrative Office's Human Resources Division by January 10, 2000. For more information, contact J.J. FitzGerald, AO Human Resources Division. Telephone: 202-502-3217.

Blue Ribbon Commission to Study Pay for Top Federal Government Officials

Imagine a company where over the past seven years senior executives' pay failed to keep pace with increases in the cost of living. It is unlikely that such a company would be able to retain experienced executives, let alone attract new ones. However, this is precisely the state of affairs in the federal government, where top officials have received modest cost-of-living increases in only two out of the last seven years.

To help address this problem of salary neglect, the Select Commission on Federal Compensation has been established. This independent private commission consisting of prominent citizens will study and make recommendations to Congress and the President regarding the compensation of high-level officials in all three branches of government. Carolyn Jefferson Jenkins, president of the League of Women Voters, has agreed to act as the commission's convening chair for its first meeting in the next few months.

Recent surveys and news reports show that many high-level federal government employees are under great financial strain. Since 1992, the nation's economy has expanded at an unprecedented rate, and wages and salaries in private industry have *increased* by nearly 20 percent, while top federal officials have seen their purchasing power *decrease* by over 16 percent. This gap was caused by Congress and the President denying top officials the modest annual cost-of-living salary adjustments promised to them by law. As a result, top officials' annual salaries now are worth $22,000 less today than they were in 1992. The impact is being felt by employees and their families in all three branches of government. For example, it is not uncommon for students who graduated from law school fewer than five years ago to earn more than U.S. district judges.

The commission also will study pay compression, which has resulted in narrowing and sometimes eliminating the differences in the top rates of pay. For instance, in many large metropolitan areas, officials in the top four levels of the Federal Senior Executive Service earn the same salary. Compression is a particularly egregious problem in the federal law enforcement community where some senior agents are earning as much as their supervisors.

Strained Bankruptcy Courts Need Additional Bankruptcy Judgeships

Noting that bankruptcy case filings have jumped more than 40 percent in the last seven years, a federal judge asked joint House-Senate subcommittees this month to create 24 new bankruptcy judgeships to address the caseload growth. Congress last created bankruptcy judgeship positions in 1992, when 977,478 cases were filed nationwide. In the 12-month period ending September 30, 1999, nearly 1.5 million bankruptcy cases were filed.

Chief Judge Michael Melloy (N.D. Iowa), chair of the Judicial Conference Committee on the Administration of the Bankruptcy System, appeared at the hearing in support of the Conference's 1999 recommendation for the authorization of 24 additional bankruptcy judgeships. "The need for 24 additional judgeships is more critical than ever to ensure that the bankruptcy courts have sufficient judicial resources to effectively and efficiently adjudicate the rights and responsibilities of parties in bankruptcy cases and proceedings," Melloy told the subcommittees. The House Judiciary Subcommittee on Commercial and Administrative Law and the Senate Judiciary Subcommittee on Administrative Oversight and the Courts heard testimony on S. 1830, a bill introduced late last month by Senator Paul Coverdell (R-GA) that would provide for additional bankruptcy judgeships.

Chief Judge Michael Melloy (N.D. Iowa) testifies before the joint House-Senate subcommittee.

"Increased bankruptcy filings are placing a severe strain on our federal courts and on the judges who preside over these cases," Coverdell said in introducing his bill, adding that the Middle and Southern districts in

Georgia have, respectively, the eighth and ninth highest weighted caseloads in the country. The House and Senate bankruptcy reform bills would authorize 18 new bankruptcy judgeships. Coverdell's legislation would authorize six more judgeships.

Congress has authorized no new bankruptcy judgeships since 1992 when 35 new judgeships were approved. Since that time, bankruptcy case filings have increased more than 40 percent.

"The Conference believes," Melloy said, "that the addition of 13 permanent and 11 temporary bankruptcy judgeships are justified by the extremely heavy case-weighted filings per judgeship in the districts involved."

Six of the requested bankruptcy judgeships have been added since the 1996 judgeship survey and the last Judicial Conference judgeship request in 1997. Although those courts had relied on judicial management techniques to administer their heavy caseloads, the burden now has become so critical such techniques are no longer effective and additional judgeships are necessary.

Melloy told the subcommittees that the Judicial Conference Bankruptcy Committee biennially conducts national judgeship surveys. In assessing a court's request for additional bankruptcy judgeships, the committee considers the weighted caseload of the bankruptcy court. Generally, it is expected that, in addition to other judicial duties, a bankruptcy court should have a caseload of 1,500 annual case-weighted filings per judgeship to justify additional judicial resources. Other factors considered are the nature and mix of the court's caseload; historical caseload data and filing trends; geographic, economic, and demographic factors in the district; the effectiveness of case management efforts by the court; and the availability of alternative solutions and resources for handling the court's workload.

"The Bankruptcy Committee noted that, in addition to other justifying factors," Melloy told the subcommittees, "the weighted filings per judge in each of the districts requesting additional bankruptcy judgeship positions were above the 1,500 annual weighted case-related filings per judge. . . . The Committee also noted that each of the requesting districts had experienced a sustained period of heavy per judgeship weighted case filings, straining the abilities of its judges to effectively administer its caseload."

"Although the Judiciary has developed creative and innovative techniques to fully utilize its existing judicial resources and manage increasing caseloads," said Melloy, "the bankruptcy courts can no longer operate as effectively as the American public deserves because of the heavy weighted per judge caseloads. Our judicial resources are strained, and the cost to society of an overburdened bankruptcy system is enormous."

Recommended Additional Bankruptcy Judgeships

District	Recommendation
Puerto Rico	1 temporary and convert the existing temporary position to permanent*
New York (N)	1 temporary
New York (E)	1 temporary
New York (S)	1 temporary
Delaware	1 permanent and convert the existing temporary position to permanent
New Jersey	1 permanent
Pennsylvania (E)	1 temporary
Pennsylvania (M)	1 temporary
Maryland	3 permanent
North Carolina (E)	1 temporary
Virginia (E)	1 permanent
Mississippi (S)	1 temporary**
Michigan (E)	1 permanent
Tennessee (W)	1 permanent
California (E)	1 temporary
California (C)	3 permanent, 1 temporary
Georgia (M)	Convert the judgeship shared with Georgia (S) to a full-time position for Georgia (M)
Georgia (S)	1 permanent, and convert the judgeship shared with Georgia (M) to a full-time position for Georgia (M)
Florida (S)	1 permanent, 1 temporary

TOTAL: 24 bankruptcy judgeships and convert the existing temporary judgeships in Puerto Rico, Alabama (N) and Delaware to permanent.

** At its September 1997 meeting, the Judicial Conference approved transmission of proposed legislation to make permanent the existing temporary judgeship in Puerto Rico.*

*** This position would help in Mississippi (N).*

Can the Federal Courts Cope Without More Judges?

Working Group's Study Shows New Judgeships Still Needed

What can the judicial branch do to handle the increasing federal court caseload with the static number of Article III judgeships that have been authorized during most of the last decade? A working group composed primarily of Judicial Conference committee chairs determined that, although the need for additional judgeships would not be eliminated, there are some steps the Judiciary should take to improve its use of existing judicial resources.

In the fall of 1998, Chief Justice William H. Rehnquist authorized the Judicial Officers Resources Working Group and gave it one year to study possible improvements in the management of available judicial officer resources and changes in the jurisdiction of the federal courts. The group was the brainchild of the Judicial Conference Committee on Judicial Resources, which is responsible for developing recommendations to the Conference on the need for additional Article III judgeships.

"The committee was concerned about the increasing requests from courts for additional judgeships since 1990," said then-committee chair and working group leader Chief Judge Julia Smith Gibbons (W. D. Tenn.). "We felt the Judiciary should be exploring its options for using and managing existing resources in ways that might minimize future judgeship requests."

The working group was created in partial response to the concerns raised by Senators Orrin G. Hatch (R-UT) and Charles E. Grassley (R-IA) as chairs, respectively, of the Senate Judiciary Committee and its Subcommittee on Administrative Oversight and the Courts. The two senators believe that the Judiciary should be as vigorous in its standards in filling judicial vacancies as it is to justify creating new judgeships. They have also been reluctant to create new judgeships and urged the Judiciary to make better use of all of its manpower resources, especially judges.

The working group was composed of the chairs of the Judicial Conference committees most involved in issues relating to flow and disposition of cases: Court Administration and Case Management, Criminal Law, Federal-State Jurisdiction, Intercircuit Assignments, Judicial Resources, and Administration of the Magistrate Judges System. Also included in the group was the chair of the Judicial Panel on Multidistrict Litigation. Administrative Office staff provided the primary support for the working group. The Federal Judicial Center also assisted by conducting a special study on visiting judge use.

The group studied civil and criminal case management at the district court level, along with the contributions of senior, magistrate, and visiting judges; the use of support staff; and automation. The group gave particular attention to existing procedures for assignments of visiting judges. It also considered the appropriate scope of federal court jurisdiction as it relates to judicial workload.

It found that the courts have explored and adopted many innovative ways to manage their workloads. These practices contribute to the efficient handling of cases on a Judiciary-wide basis. Although continued improvement in the management of resources is possible for courts in acute, long-term difficulty, the improvements "at most offer a means of diminishing the impact of a crisis on an interim basis. For other courts, the improvements may alleviate more temporary or less serious caseload problems." The working group concluded, however, that improvements in management practices alone would not eliminate the need for more judgeships. Further, the improvements are unlikely to reduce significantly future judgeship requests.

The working group recommended to the Judicial Conference Executive Committee that the following measures be considered by appropriate Judicial Conference committees or other judicial branch entities to use fully its existing judicial officer resources and enhance its ability to handle its caseload:

- Expand the effort to collect and share information among judges and courts about how to obtain visiting judge assistance and use it most effectively.
- Endorse creative ways of using visiting judges that maximize their value to the borrowing court and minimize administrative burdens for both the visitor and the court receiving assistance.
- Enhance circuit-based systems for providing district courts with visiting judge assistance.
- Collect comprehensive data on the numbers of visiting judges assigned to work in other courts, and on the nature and amount of work they perform, without imposing inordinate burdens

December 1999 Program Calendar for The Federal Judicial Television Network

All times are Eastern Standard Time

Advances in Drug Abuse and Addiction Research
Dec. 8, 8:30 a.m.

Agricultural Bankruptcy
Dec. 16, 8:30, 9:30 a.m.

All About the Circuit Executive's Office
Dec. 9, 8:30 a.m.

The Architecture of Antitrust
Dec. 15, 1:00 p.m.; Dec. 16, 12:30, 3:30 p.m.

Assessment of Sex Offenders for Sentencing, Supervision, and Treatment (NIC/CSOM)
Dec. 10, 2:00 p.m.

Automated Document Production Program
Dec. 13, 9:00 a.m.; Dec. 17, 11:30 a.m.

Avoiding Infectious Diseases
Dec. 13, 10:00 a.m.; Dec. 14, 11:30 a.m.; Dec. 20, 2:00 p.m.

Basic Browser Usage
Dec. 7, 8:30 a.m.

Conducting Effective Performance Appraisals
Dec. 9, 1:00 p.m. LIVE

Contests and Competitions as Instructional Tools
Part One, Dec. 8, 1:00 p.m.; Part Two, Dec. 9, 10:30 a.m.

Court to Court (October 1999)
Dec. 2, 8:30, 9:30, 10:30 a.m.; Dec. 8, 3:00, 4:00 p.m.

Courtroom Technologies
Dec. 3, 1:30 p.m.; Dec. 7, 4:00 p.m.; Dec. 21, 8:30 a.m.

EDR Procedural Overview
Dec. 3, 10:30 a.m.; Dec. 7, 2:00 p.m.; Dec. 20, 3:00 p.m.

EDR Substantive Overview
Dec. 3, 11:30 a.m.; Dec. 7, 3:00 p.m.; Dec. 20, 4:00 p.m.

The Essence of Leadership (PBS)
Dec. 1, 10:55 a.m. LIVE

Executive Briefing: Travel Regulations
Dec. 6, 2:30 p.m.; Dec. 13, 12:00 p.m.; Dec. 14, 4:00 p.m.; Dec. 17, 12:30 p.m.

Federal Retirement Benefits for Court Personnel—Frequently Asked Questions
Dec. 6, 9:00 a.m.; Dec. 17, 3:30 p.m.; Dec. 21, 9:00 a.m.

FJTN From Where You Sit
Dec. 2, 11:30 a.m. LIVE

Home Confinement
Dec. 6, 10:00 a.m.; Dec. 17, 2:30 p.m.; Dec. 20, 9:00 a.m.

In Camera
Every Monday at 8:30 a.m. (except Dec. 27); every Tuesday at 4:30 p.m. (except Dec. 28)

Introduction to Case Management/Electronic Case Files
Dec. 6, 11:00 a.m.; Dec. 17, 1:00 p.m.

Introduction to *Sentry* for Probation and Pretrial Services Staff
Dec. 7, 1:00 p.m. LIVE; Dec. 17, 8:30 a.m.; Dec. 21, 3:30 p.m.

Judiciary Benefits Initiative: Flexible Spending Accounts
Dec. 3, 2:00 p.m.; Dec. 6, 12:30 p.m.

Judiciary Benefits Initiative: Supplemental Benefits
Dec. 3, 3:00 p.m.; Dec. 6, 1:30 p.m.

Judiciary Benefits Initiative: What to Expect after Enrolling in the Supplemental Benefits Programs
Dec. 14, 1:00 p.m. LIVE; Dec. 21, 11:00 a.m.

Managing Generation X
Dec. 10, 12:30 p.m.

Maximizing Tax Savings through Use of the Thrift Savings Plan (TSP)
Dec. 13, 1:00 p.m. LIVE; Dec. 21, 12:00 p.m.

Neurobiology of Addictidn
Dec. 1, 1:00 p.m.; Dec. 8, 11:30 a.m.

New Federal Court Reporter Orientation
Dec. 7, 10:30 a.m.; Dec. 14, 2:00 p.m.

Organization Design in the Courts
Dec. 2, 1:00 p.m. LIVE

Other Crimes, Wrongs, or Acts: Applying Federal Rule of Evidence 404(b), Parts One &Two
Dec. 15, 8:30, 10:00 a.m.

An Overview of the Federal Employees Health Benefits
Dec. 6, 4:00 p.m.; Dec. 21, 1:30 p.m.

An Overview of Sex Offenders in the Federal System
Dec. 10, 10:30 a.m.

Pedophiles Who Use the Internet
Dec. 1, 8:30 a.m.

Perspectives on Prdbation and Pretrial Services (April 1999)
Dec. 10, 8:30, 9:30 a.m.

Pharmacoldgy of Drugs of Abuse
Dec. 8, 10:00 a.m.

Pretrial Services Investigations and Reports Training
Dec. 17, 9:30 a.m.

Prison Litigation Reform Act Update
Dec. 15, 2:30 p.m.; Dec. 16, 2:00 p.m.

Restitution: Determining Victims and Harms
Dec. 1, 2:30 p.m.

Review of Travel Regulations for Support Staff
Dec. 7, 11:30 a.m.; Dec. 13, 11:00 a.m.

Supervising Individuals with a Dual Diagnosis
Dec. 14, 3:00 p.m.; Dec. 21, 10:00 a.m.

Supreme Court 1998-99: The Term in Review Parts One, Two, and Three
Dec. 16, 10:30 a.m.

Using Knowledge Management in Your Court
Dec. 6, 3:00 p.m.

WordPerfect 8.0 Basics
Dec. 3, 8:30 a.m.; Dec. 14, 9:30 a.m.

WordPerfect Document Formatting
Dec. 3, 12:30 p.m.; Dec. 21, 2:30 p.m.

WordPerfect File Management
Dec. 13, 2:30 p.m.; Dec. 20, 10:00 a.m.

WordPerfect QuickFamily
Dec. 3, 4:00 p.m.; Dec. 14, 8:30 a.m.

WordPerfect Templates
Dec. 20, 12:00 p.m.

Calendar Dates for The Third Branch

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DECEMBER

1-3 **Wednesday-Friday**
Committee on Security and Facilities

2-3 **Thursday-Friday**
Committee on Court Administration and Case Management

7 **Tuesday**
Court of International Trade Judicial Conference

6-10 **Monday-Friday**
Phase I Orientation Seminar for District Judges

6-10 **Monday-Friday**
Phase II Orientation Seminar for Bankruptcy Judges

8-9 **Wednesday-Thursday**
Committee on Judicial Resources

8-10 **Wednesday-Friday**
Committee on Defender Services

9-10 **Thursday-Friday**
Committee on the Administration of the Magistrate Judges System

9-10 **Thursday-Friday**
Committee on the Administrative Office

14-15 **Tuesday-Wednesday**
Committee on Criminal Law

14-15 **Tuesday-Wednesday**
Committee on International Judicial Relations

14-16 **Tuesday-Thursday**
Committee on Automation and Technology

PLEASE POST

VACANCY ANNOUNCEMENTS

THE THIRD BRANCH

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ASSISTANT FEDERAL DEFENDER, Sioux City, Iowa

The Federal Defender is accepting applications for the position of Assistant Federal Defender for its Sioux City office. Duties will include trial, appellate, and ancillary matters. Federal criminal trial experience preferred. The successful applicant will have demonstrated a capacity or aptitude for excellence in trial and appellate practice, a commitment to the representation of indigent accused persons, and a reputation for personal integrity. Appointment is subject to a satisfactory background investigation. Applicants must be a graduate of an accredited law school and a member in good standing of the bar of any state or territory, and should have sufficient experience to immediately undertake the defense of serious criminal cases in the U.S. district courts and in the courts of appeals. Salary commensurate with Assistant U.S. Attorneys. Send resume, writing sample and cover letter to Nicholas Drees, 300 Walnut, Suite 295, Des Moines, Iowa 50309. No telephone calls please. **Application deadline: December 1, 1999**

ASSISTANT CIRCUIT EXECUTIVE FOR LEGAL AFFAIRS, Foley Square, NY

The Assistant Circuit Executive for Legal Affairs reports to the Circuit Executive and supervises all attorneys and administrative staff employed by the Second Circuit Court Of Appeals in the Staff Attorneys Office, the Civil Appeals Management Program Unit and the Administrative Attorneys Unit, and administers and oversees the production of all legal work required by the Court of Appeals. The ACE for Legal Affairs provides legal and administrative support to the court, various court committees, the Circuit Executive's Office and the state and local bars; assists in recruitment of legal staff at the court and other senior legal post candidates within the Second Circuit, evaluates and advises the court concerning candidates for Criminal Justice Attorney and *pro bono* attorney panels; investigates allegations of judicial and attorney misconduct and performs other tasks. Applicants must be admitted to practice before the highest court of a state, territory, commonwealth, or possession of the United States and have a minimum of five years' experience in the practice of law, in legal research, legal administration, or equivalent experience gained after graduation from law school. Salary Range: JSP-16 ($96,948 - $122,379) depending on experience, current salary, and qualifications. Applicants must submit a cover letter and resumes to: U.S. Court of Appeals, Second Circuit, 40 Foley Square, Room #1604, New York, NY 10007, Attn: Personnel, Reference #FY00-01. Writing samples may be requested at a later date. **Application deadline: December 17, 1999**

CHIEF PROBATION OFFICER, Eastern District of Michigan

The U.S. District Court for the Eastern District of Michigan is seeking applicants for the position of Chief Probation Officer - #99-12. A bachelor's or master's degree in social sciences, criminal justice, public administration or related field(s), or a law degree is required as well as a minimum of seven years of progressively responsible administrative, technical, and managerial experience. First-time appointees to positions covered under law-enforcement officer retirement provisions must not have reached their 37th birthday at the time of appointment. Candidates must have a performance history that demonstrates proven skill in managing limited resources against multiple demands, strong organizational prioritizing and problem solving skills, and solid oral and written communication skills. Salary: up to JSP-17 ($82,348 - $121,914). Interested applicants should call (313) 234-5065 for a copy of the vacancy announcement. Submit cover letter with detailed resume including salary history to David J. Weaver, Court Administrator, 814 Theodore Levin U.S. Courthouse, Detroit, Michigan 48226 or fax to (313) 234-5491. **Application deadline: Friday, December 31, 1999**

CLERK OF COURT, U.S. Bankruptcy Court, Eastern District of Louisiana

The Bankruptcy Court for the Eastern District of Louisiana seeks applicants for the position of clerk of court. The clerk of court is responsible for managing the administrative activities of the clerk's office and overseeing the performance of the statutory duties of the office. Applicants must have an undergraduate or post graduate degree in public or judicial administration or related field or a law degree. A minimum of 10 years of management experience in public service or business, which provides a thorough understanding of organizational, procedural, and human aspects in managing an organization is required. Salary: JSP-16 ($92,844). Interested applicants must submit a cover letter, a resume with salary history and job references in triplicate to the Honorable T. M. Brahney, Chief Judge, U.S. Bankruptcy Court, c/o Marian Deerey, Personnel Specialist, Hale Boggs Federal Building, Room 601, New Orleans, Louisiana 70130. **Application deadline: December 15, 1999.**

CLERK OF COURT, U.S. Bankruptcy Court, District of Delaware

The Bankruptcy Court for the District of Delaware seeks applicants for the position of clerk of court. The clerk of court is responsible for managing the administrative activities of the clerk's office and overseeing the performance of the statutory duties of the office. Applicants must have a minimum of 10 years of progressively responsible administrative experience in public service or business, which provides a thorough understanding of organization, procedural and human aspects in managing an organization. At least three of the 10 years' experience must have been in a position of substantial management responsibility. Applicants also must have an understanding of automated systems, have administrative abilities and possess strong leadership and interpersonal skills. Salary: JSP-16 ($94,975 to $119,888). Qualified persons are invited to submit an original and one copy of a detailed resume including educational, work, and salary history, as well as a narrative statement not to exceed two pages addressing the applicant's ability to plan and implement the most effective use of resources, human and financial, to achieve objectives, to interpret, understand, and implement the politics of the court, to interact with various types of people, and the applicant's basic management philosophy. Submit application materials in a an envelope marked confidential to Peter J. Walsh, Chief U.S. Bankruptcy Judge, District of Delaware, Room 629, 824 Market Street, Wilmington, Delaware 19801. **Application deadline: November 30, 1999.**

on already overtaxed judge and staff.

- Develop and implement an automated system to aid the management of visiting judge assignments.

- Provide more information and education for chief judges on a wide range of administrative matters.

- Include, in the evaluation of future judgeship needs, careful scrutiny of the requesting court's use of visiting judges and other strategies for handling judicial workload.

- Establish and maintain processes for identifying high workload courts (as defined in Judicial Conference criteria), and using circuit-based mechanisms for informing those courts about the resources, programs, and procedures that can help them manage their caseloads, and providing them with administrative or technical assistance in obtaining or using those tools.

- Continue coordinated efforts among Judicial Conference committees to promote effective use of existing judicial officer resources.

In response to the working group's report, the Executive Committee referred these recommendations to the relevant Judicial Conference committees for appropriate implementation. Copies of the report also were forwarded to chief circuit judges, with a request for their active participation in cooperative efforts to achieve the working group's goal of the most effective use of available judicial resources.

History Offers Cautionary Lesson on the Judiciary

Chief Justice William H. Rehnquist recently gave a historical perspective to political assaults on the Judiciary when he delivered the Edward G. Donley Memorial Lecture at the College of Law, West Virginia University. The speech highlighted several incidents in American history where public attention and political controversy centered on the Supreme Court. "The Supreme Court has attracted this attention, and been embroiled in this sort of controversy," said Rehnquist, "because it exercises the power of 'judicial review—the authority of a constitutional court to declare a legislative act invalid."

Rehnquist spoke in particular of the effort to remove Justice Samuel Chase from the Supreme Court in 1805 because of his rulings from the bench, and the attempt by President Franklin D. Roosevelt to "pack" the court in 1937 in order to swing the balance of the Court. "Each failed," said Rehnquist, "because some members of the dominant political party refused to go along with the leadership, feeling that the preservation of an independent Judiciary and an independent Supreme Court were more important than voting at their party's call."

Samuel Chase, a justice of the Supreme Court, had given a charge to a grand jury in which he sharply criticized the new Congress for repealing a law passed by the lame duck Federalist Congress—criticism that Thomas Jefferson called a "seditious and official act on the principles of our Constitution." At that time, impeachment had been proposed as "a method by which the Judiciary could be brought into line with prevailing political views." Chase's subsequent acquittal set a precedent from that day: a judge's judicial acts may not serve as a basis for impeachment.

President Roosevelt's attempt to pack the Court followed "Black Monday" in 1935, when the court handed down decisions invalidating several acts key to the President's New Deal. The court did not share Roosevelt's views on social legislation and congressional authority to regulate interstate commerce. Roosevelt, in turn, recommended that the judicial branch be "reorganized" to allow him to appoint an additional justice for each member of the Supreme Court who was over 70 and did not elect to retire. The court's membership would have ballooned to 15 under this reorganization. Resistance from Chief Justice Charles Evans Hughes, public reaction to the proposed bill, and time itself combined to defeat the bill. "President Franklin Roosevelt lost this battle in Congress," said Rehnquist, "but he eventually won the war to change the judicial philosophy of the Supreme Court. He won it the way our Constitution envisions such wars being won—he served as President for slightly more than 12 years and during that period of time appointed seven associate justices and one chief justice."

The Edward G. Donley Memorial Lectures were created in memory of 1899 College of Law graduate Edward G. Donley and are conducted annually under the direction of the faculty of the West Virginia University College of Law. The lectures bring to the university distinguished members of the legal profession to lecture in a field of current interest and development in the law.

JUDICIAL MILESTONES

Appointed: Robert A. Katzmann, as U.S. Court of Appeals Judge, U.S. Court of Appeals for the Second Circuit, September 22.

Appointed: Adalberto Jordan, as U.S. District Judge, U.S. District Court for the Southern District of Florida, October 1.

Appointed: Naomi Reice Buchwald, as U.S. District Judge, U.S. District Court for the Southern District of New York, September 24.

Appointed: David N. Hurd, as U.S. District Judge, U.S. District Court for the Northern District of New York, September 24.

Appointed: Carlos Murguia, as U.S. District Judge, U.S. District Court for the District of Kansas, September 23.

Appointed: Marsha J. Pechman, as U.S. District Judge, U.S. District Court for the Western District of Washington, October 5.

Appointed: T. John Ward, as U.S. District Judge, U.S. District Court for the Eastern District of Texas, September 27.

Appointed: Robert G. Mayer, as U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of Virginia, October 15.

Appointed: Wallace W. Dixon, as U.S. Magistrate Judge, U.S. District Court for the District of South Carolina, October 4.

Appointed: David J. Waxse, as U.S. Magistrate Judge, U.S. District Court for the District of Kansas, October 4.

Appointed: William Arthur Webb, as U.S. Magistrate Judge, U.S. District Court for the Eastern District of North Carolina, October 18.

Elevated: Bankruptcy Judge Robert A. Mark, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Southern District of Florida, succeeding A. Jay Cristol, September 25.

Elevated: Bankruptcy Judge David P. McDonald, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Eastern District of Missouri, succeeding James J. Barta, October 1.

Elevated: Bankruptcy Judge George L. Proctor, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the Middle District of Florida, succeeding Alexander L. Paskay, September 13.

Elevated: Bankruptcy Judge Albert E. Radcliffe, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the District of Oregon, succeeding Polly S. Higdon, September 1.

Elevated: Bankruptcy Judge Gregg W. Zive, to Chief Bankruptcy Judge, U.S. Bankruptcy Court for the District of Nevada, succeeding Linda B. Riegle, October 1.

Senior Status: Judge David A. Nelson, U.S. Court of Appeals for the Sixth Circuit, October 1.

Senior Status: Judge Avern Cohn, U.S. District Court for the Eastern District of Michigan, October 9.

Senior Status: Judge William Duffy Keller, U.S. District Court for the Central District of California, October 29.

Senior Status: Judge G. Ernest Tidwell, U.S. District Court for the Northern District of Georgia, October 8.

Retired: Bankruptcy Judge Rodney R. Steele, U.S. Bankruptcy Court for the Middle District of Alabama, September 17.

Retired: Magistrate Judge G. Warthen Downs, U.S. District Court for the Eastern District of Virginia, September 30.

Retired: Magistrate Judge Richard W. Peterson, U.S. District Court for the Southern District of Iowa, September 29.

Deceased: Judge Sam J. Irving, III, U.S. Court of Appeals for the Fourth Circuit, September 18.

Deceased: Senior Judge W. Arthur Garrity, Jr., U.S. District Court for the District of Massachusetts, September 16.

Deceased: Judge Bernard T. Moynahan, Jr., U.S. District Court for the Eastern District of Kentucky, September 30.

Deceased: Senior Judge Leland C. Nielsen, U.S. District Court for the Southern District of California, September 23.

Deceased: Magistrate Judge Zachary R. Karol, U.S. District Court for the District of Massachusetts, September 23.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of November 1, 1999

Courts of Appeals	
Vacancies	25
Nominees	20
District Courts	
Vacancies	37
Nominees	23
Court of International Trade	
Vacancies	0
Nominees	0
Courts with Judicial Emergencies	17

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Design Awards Recognize Courthouses At Heart of Cities

Three federal courthouses have won awards for bringing exceptional architecture to their city centers.

GSA Design Awards

Federal courthouses in Scranton, Pennsylvania, and Charleston, West Virginia, have earned citations in the General Services Administration National Design Competition.

The William J. Nealon Federal Building and U.S. Courthouse in Scranton, Pennsylvania, was awarded a design citation in the On the Boards category. This category recognizes outstanding architecture still under construction. (The courthouse is now completed and occupied.) The design unifies an existing courthouse built in 1931 with a newly constructed annex facility and is notable for its success in allowing the two buildings to work as a single unit.

Willian J. Nealon Federal Building and U.S. Courthouse in Scranton, Pennsylvania.

The Robert C. Byrd U.S. Courthouse won citations for both architecture and for art. The courthouse occupies a city block in the heart of Charleston, West Virginia, consolidating the court and related agencies into a single facility, and is the second largest building in West Virginia. The architecture citation from GSA noted that the building's "strong linear features and pronounced cornice lend a sense of permanence and formality to the community."

The courthouse's stained glass art work by artist David Wilson, approximately 2,000 square feet of glass in intricate patterns and diverse colors on the lobby, 5th, and 6th floors, won the art citation for the building.

The Robert C. Byrd U.S. Courthouse also is the recipient of Building Magazine's 1999 New Construction Award in the government and public works category. The magazine called the courthouse "a monument to the judicial system and a tribute to modern design and artwork."

Robert C. Byrd Courthouse in Charleston, West Virginia.

Edward T. Gignoux U.S. District Courthouse in Portland, Maine.

Portland Preservation Award

Maine's first federal courthouse has received the 1999 Institutional Preservation Award from Greater Portland Landmarks. The Edward T. Gignoux U.S. District Courthouse in Portland, Maine, built in the richly detailed Second Renaissance revival style, was constructed in 1911, with an addition in 1931. The exterior remained much the same over the intervening years, but the interior spaces changed substantially. The 1999 award honors a major interior and exterior rehabilitation of the courthouse, including the "outstanding restoration of an historic courtroom in underutilized space."

Greater Portland Landmarks has been called the architectural conscience of Portland because of its work to increase public awareness of and appreciation for greater Portland's remarkable "built" environment.

The Gignoux U.S. Courthouse is one of a group of government buildings in Portland's city center, which is also part of the city's historic district.

FBA President Seeks to Build Bridges

Jackie A. Goff is the current president of the 15,000-member Federal Bar Association. For more than 75 years, the FBA has been the professional organization for private and government lawyers and judges involved in federal practice. A program director for the U.S. Department of Transportation/Office of the Inspector General, Goff has been active in the Capitol Hill Chapter of the FBA, and has served as chair of the Intellectual Property & Communications Law Section, the National Membership Committee, and the Budget Committee.

Q: As the bar association for federal practitioners, what are some of the issues that the FBA is focusing on today, or will be addressing in the future?

A: For more than 75 years, the FBA has worked to support the federal courts and to enhance the professionalism of federal practitioners. We have a number of issues on our plate right now, related to those goals. We try to focus on issues where we can bring "added value," and play a role that is helpful and supportive of the Judicial Conference, the AO, and the federal Judiciary in general, on matters ranging from judicial compensation, FEGLI, and funding for the courts, to the structure of the Judiciary and reducing the time required to fill judicial vacancies.

Q: Several years ago, the FBA established a Government Relations Committee. What is the role of that committee, and what prompted the decision to form it?

A: The decision in 1996 to establish a Government Relations Committee grew out of a growing realization that the FBA needed a bigger presence, to ensure that its members' voices were heard—on the Hill and in the executive branch—on issues important to them. The committee is made up of 13 members (practitioners as well as judges), who are hand-picked for their knowledge of how Washington works. Bill LaForge, a government relations partner at McGuiness, Norris & Williams and a former Senate staffer, has done a superb job of chairing the committee for the past two years, with the very able assistance of our legislative affairs consultant, Bruce Moyer.

Every year, the committee works with the FBA's 25 sections and divisions to develop an Issues Agenda for adoption by the National Council. The committee spends the rest of the year implementing the Issues Agenda, working closely with Washington decision-makers in all three branches to promote the association's policy positions.

Q: What programs and projects does the FBA have in place that foster communications between the courts and the bar association?

A: Effective bench/bar relations—at the national, circuit and chapter levels—are integral to our mission and operations. Our Bench/Bar Relations Committee is a reflection of the importance we place on communication between the courts and members of the bar. At the national level, we have worked hard to cultivate a very good relationship with the Judicial Conference, especially the Committee on the Judicial Branch, and the AO, coordinating our efforts on legislative and policy matters of mutual interest. Federal judges also serve on a number of the FBA's national committees. And we profile a federal jurist in every issue of *The Federal Lawyer*, the FBA's magazine.

Jackie A. Goff

But our most frequent contact and communication with the Judiciary is at the local level. The 78 FBA chapters all across the country reach out to federal judges on the district courts and the courts of appeals. Circuit leaders and representatives of the association attend annual circuit conferences, and federal judges are frequent speakers and honored guests at chapter programs, including admission ceremonies, seminars on court rules and procedures, skills training, and programs on substantive areas of the law.

Q: The public and the press continue to criticize the legal community. What role do associations have in improving the perception of the legal profession?

A: Every member of the profession has a responsibility to do his very best every day to serve the interests of justice. We believe the FBA has an obligation to help its members fulfill that responsibility by assisting them in the continuous development of their legal skills and enhancing their appreciation of the ethics of legal practice. The scores of programs that the FBA presents every year do just that.

But there is always more to be done. The FBA—and other organizations like the FBA—need to do more to educate the public about the legal

system, the role of justice in a free society, and the indispensable role of lawyers. Our Younger Lawyers Division, for example, sends dozens of FBA members into the public schools for one day each year to teach young Americans the fundamental precepts of the Bill of Rights. What a wonderful example this is.

We also need to do more to publicly recognize and publicize the accomplishments of the "unsung heroes" in our profession—those who put justice ahead of their pocketbooks and give of their time and talents to represent the indigent and underprivileged in the courts every day. In fact, the Ilene and Michael Shaw Public Service Award makes annual grants of up to $5000 available to FBA chapters that seek financial support for innovative public service projects. In addition, I believe the FBA exemplifies attorneys who focus on civility and collegiality in their practice.

Q: The FBA has been very supportive of a pay adjustment for judges. Why is judicial pay an important issue for the FBA?

A: It's a critical issue for us, for at least three reasons. First, as a pure matter of principle, judicial compensation goes to the very heart of judicial independence, and judicial independence is the foundation of our legal system. Second, we want a federal Judiciary of the highest caliber. Fair and adequate compensation helps ensure that the bench can attract and retain the best and the brightest of the profession. Last, but not least, we are proud to count more than 600 federal judges among the 15,000 members of the FBA.

Q: A representative of the FBA testified before Congress on the proposed division of the Ninth Circuit. What was the FBA's position and did the FBA make other recommendations to enhance the ability of the federal courts to deliver justice?

A: The FBA opposed the White Commission's proposed division of the Ninth Circuit. Our testimony made the point that splitting the Ninth Circuit into three semi-autonomous adjudicative units and making related changes to the *en banc* process would not serve the best interests of the Ninth Circuit, its adjudicatory processes, litigants, or justice. We reached that view after two years of substantial work, including discussions with members of the Ninth Circuit Judiciary as well as members of the bar.

We urged Congress to focus instead on two other concerns critical to the well-being of the Ninth Circuit and the federal court system as a whole: the timely filling of judicial vacancies and reversing the trend to federalize crimes in areas traditionally reserved to the states. Both concerns directly affect the courts' capacity to render justice fairly and swiftly. We recommended that, before it passes any future criminal legislation, Congress prepare a Judicial Impact Statement projecting the increased caseload and costs that would result from passage of the legislation. The response to that recommendation was encouraging, so we're developing a more detailed proposal on the subject.

Q: As the year 2000 approaches, what changes do you expect in the federal bar, especially in the practice of civil and criminal law?

A: I think you'll see the further development of trends that have picked up speed in the past decade. Two trends in particular are the use of technology and alternative dispute resolution in the courts. Electronic justice and ADR afford the potential for quantum leaps in how practitioners argue cases and in how judges decide cases. In fact, the emergence of the "virtual courthouse" may not be that far off. This could have huge implications for the way law is practiced in both civil and criminal practice. For example, will we continue to select and gather juries as we do today? The internet and the globalization of our economy also may lead to more multi-disciplinary practice and the merger of law firms into larger and larger ones. It also may lead to greater discussion about the convergence of legal systems around the world, which of course raises a host of political and ethical questions. Exciting times are on the way—for judges and lawyers—and I'm sure that the FBA will be part of the mix.

Q: What are your goals for your presidency?

A: I'm using the term "building bridges in the new millenium" and I'm asking our members to participate in an outreach to four specific groups: the military; government employees (only about 15-18 percent of our membership now are actually employed in the federal government); law students; and attorneys of color.

Our Younger Lawyers Division has initiated a moot court, and I have started a program this year we're calling "adopt a law school."

I have attended and been introduced by the presidents of the National Bar Association, the Hispanic National Bar Association, and soon will be participating in the Asian Pacific Bar Association.

Again, while these very large groups have their own agendas, probably about 20 to 30 percent of their memberships practice federal law and the FBA would have something to offer to them. So as we go into the new millenium, I'm trying to make sure that the FBA is open to every attorney, and indeed law student, who is interested in federal practice.

Judicial Emergency Declared in Fifth Circuit

Last month, Chief Judge Carolyn Dineen King (5th Cir.) issued an order declaring a judicial emergency in the Fifth Circuit Court of Appeals. The court, which is authorized 17 judges in active service, has been effectively reduced to 13. There are three vacancies, one of which has remained unfilled since 1997. In addition, an active judge on the circuit is recuperating from a serious automobile accident and will be unavailable to perform his judicial duties for an indefinite period of time.

During the last nine years, the Fifth Circuit's filings have increased 65 percent. As of June 30, 1999, the court's workload neared historical highs, with 8,325 filings and 5,430 pending cases. The court has resisted an increase in authorized judgeships in the belief the full complement of 17 judgeships was sufficient to handle even this heavy workload. Unfortunately, the total number of active judges has fallen well below that number, and may remain so for some time. "We have now reached the point," said King, "where we are so far below our authorized strength that the timeliness and quality of our work will be jeopardized if we are unable to enlist the aid of visiting judges in greater numbers."

The Fifth Circuit's judicial emergency is declared under 28 U.S. C. 46(b), which states that separate panels of three judges, at least a majority of whom shall be judges of that court, will hear and determine cases and controversies unless the chief judge of the court certifies there is an emergency including, but not limited to, the unavailability of a judge of the court because of illness. The emergency declaration allows the court to seat panels of judges where the majority are not members of the circuit. The Fifth Circuit may now make more extensive use of visiting judges, seating panels with only one active Fifth Circuit judge and two visiting judges.

Judicial emergencies under 28 U.S. C. 46(b) have been declared only twice before in the Judiciary's history. Chief Judge Ralph K. Winter (2nd Cir.) declared a judicial emergency in the Second Circuit in 1998. The first judicial emergency, declared by Chief Judge Charles Clark (5th Cir.) in 1991, also was in the Fifth Circuit.

The judicial emergency declared by King differs from the 21 non-statutorily related judicial emergencies existing as of November 1 in federal courts. A judicial emergency as defined by the Judicial Conference is a non-statutory designation relating strictly to vacant judgeship positions and takes into consideration the weighted or adjusted filings of the court and, in some instances, the length of time a judicial vacancy has existed.

THE THIRD BRANCH

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THE THIRD BRANCH

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From Skepticism to Settlement: How One Chief Judge Got A Room Full of Attorneys to Agree

In the fall of 1999, four related civil cases were pending in Arizona, Idaho, and Eugene and Portland, Oregon. Several large corporations that manufactured and distributed agricultural chemicals were involved. Accusations of misappropriation of trade secrets and contract interference had been exchanged over three years of contentious discovery.

Trial and eventual resolution of the dispute likely was several years and millions of dollars away. Then Chief Judge Michael Hogan (D. Or.) was assigned a related case.

"It took us until 4 a.m. the next day...I think there were around 30 different documents and every line was disputed..."

"When I took a look at the case, inquired about the details of the other cases, and obtained copies of the initial pleadings, they seemed to be interrelated," said Hogan. "If all the cases could be pulled together, I thought there was a chance of a settlement."

Hogan contacted the judges in the other cases for their consent to mediate. "I worked out the joint orders with them," said Hogan, "so everyone felt compelled to come to the party." The reaction was immediate, if not particularly positive. Said William Wheatley, a principal attorney representing clients in one of the cases, "I know some of the lawyers went ballistic about it. They thought nobody has ever heard of this type of settlement conference, when all we've done is file a complaint. We felt the same way, but hoped that it might work."

That mindset, according to Hogan, isn't unusual. "The attorneys in at

See ***Mediation*** *on page 6*

Finally, A Budget!

Year 2000 Brings COLA for Judges

Before Congress wrapped up the first session of the 106th Congress—after weeks of wrangling and several continuing resolutions—its members gave the Judiciary a fiscal year 2000 budget and federal judges a 3.4 percent cost-of-living adjustment, only their second COLA since 1993. Also attached to the spending bill was authorization for nine Article III judgeships, the first since 1990. The President signed P.L. 106-113, the Consolidated Appropriations Act, November 29.

"We are grateful that Congress acknowledged the minimum needs of the courts. Clearly, it is not all we require, but at least it avoids the staffing cuts and furloughs we were facing after the House and Senate passed their bills last summer," said Administrative Office Director Leonidas Ralph Mecham.

The long wait for a Judiciary budget began with the President's veto of the Commerce, Justice, State and Judiciary appropriations bill on October 26. Seven continuing resolutions and

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Changing Trends in Prisoner Petition Filings ..... pg. 7

Budget continued from page 1

days of political wrangling followed. The House finally passed a consolidated bill incorporating five spending bills on November 18, and the Senate approved it without debate on November 19.

Included in the omnibus bill is a reduction for all federal agencies that, at .38 percent, is significantly less than the .97 percent reduction previously threatened. For the Judiciary, this amounts to a reduction of approximately $14 million from appropriations contained in the earlier conference agreement.

The consolidated spending bill appropriates $3.95 billion for the entire judicial branch in FY 2000, and when added to other sources of funds, including fees and carryover, it results in a 10 percent increase over FY99 actual spending. This is the same level as the conference agreement reached by the House and Senate on their appropriations bills. Also in the conference report and in the final spending package was the affirmative action by Congress required by Section 140 of P.L. 97-92 to give federal judges an estimated 3.4 percent cost-of-living adjustment in 2000. The .38 percent cut does not affect the COLA. The FY2000 budget also contains the legislative remedy that protects Article III judges 65 years of age or older from paying possibly large future Federal Employees Group Life Insurance (FEGLI) premium increases. Early in 1999, the Office of Personnel Management had announced that premiums would rise substantially, costing some senior judges over $13,000 more per year for the same level of life insurance. The Judicial Conference, many judges, the Federal Judges Association, and AO Director Mecham had strongly protested the increase and sought a legislative solution.

The consolidated spending bill contains authorization for nine Article III judgeships: four for the Middle District of Florida, three for the District of Arizona, and two for the District of Nevada. The Judicial Conference had recommended to Congress the creation of 69 Article III judgeships but S. 1145, the Federal Judgeship Act of 1999, which contains the Conference recommendations, has languished in committee.

The Judiciary—from the Chief Justice and federal judges of the Judicial Conference Budget Committee to numerous other judges across the country, Mecham, and AO staff—worked aggressively to make its budget case to Congress throughout the fall. The stakes were high. Failure to make that case successfully would have resulted in funding levels well below the requested current services budget, and reductions to funded staffing levels of between 8 and 11 percent below FY 99. In fact, the Senate funding level would likely have resulted in a hiring freeze and a 10-day furlough for all court employees except judges.

A major victory in the budget battle was achieved when, rather than splitting the difference between the House and Senate budget bills, conferees took the rare step of providing a funding level higher than either bill. The final consolidated budget reflects this higher level.

FY 2000 Budget Judiciary Funding ($000)
Appropriated Funds

Appropriation	FY 1999 Enacted	House Bill	Senate Bill	Appeal	P.L. 106-113 with .0038 reduction
Supreme Court					
Salaries & Expenses	$31,980	$35,041	$35,975	$35,903	$35,400
Buildings & Grounds	5,400	6,872	9,652	8,002	7,972
Court of Appeals for the Federal Circuit	16,101	16,101	16,959	16,959	16,788
Court of Int'l Trade	11,804	11,804	11,971	11,971	11,931
Courts of Appeals, District Courts, & Other Judicial Services					
Salaries & Expenses	2,834,500	3,068,815	3,004,359	3,184,739	3,126,705
Defender Services	391,831	387,795	353,888	387,795	378,852
Juror Fees	66,861	63,400	60,918	60,918	53,765
Court Security	174,569	190,029	196,026	196,026	193,028
Administrative Office	54,500	54,500	56,054	57,482	54,791
Federal Judicial Center	17,716	17,716	18,476	18,997	17,932
Judiciary Retirement Funds	37,300	39,700	39,700	39,700	39,700
U.S.S.C	9,487	8,500	9,743	9,743	8,468
Total	**$3,652,049**	**$3,900,273**	**$3,813,721**	**$4,028,235**	**$3,945,332**

Salary Rates Change in New Year

Position	Salary Rates Effective 1/1/2000
President of the U.S.	$200,000*
Chief Justice of the U.S.	$181,400
Associate Justices	$173,600
Judges, Courts of Appeals	$149,900
Members of Congress	$141,300
Judges, U.S. District Court	$141,300
Judges, Court of International Trade	$141,300
Judges, U.S. Court of Federal Claims	$141,300
Judges, U.S. Tax Court	$141,300
Bankruptcy Judges	$129,996
Magistrate Judges (full-time)	$129,996

** The President's salary will increase to $400,000 on January 20, 2001.*

CJA Rate Increase First Since 1996

The Consolidated Appropriations Act contains funds for the first compensation rate increase for most Criminal Justice Act attorneys since 1996, and only the second adjustment in over 15 years. CJA panel attorneys will receive a $5-per-hour increase to the $65 in-court and $45 out-of-court rates currently in effect in most judicial districts. The Judiciary had requested funding to raise the in-court and out-of-court rates to $75 nationwide. To date, Congress has provided only funding to pay the full $75 rate in part or all of 12 judicial districts. At its September 1999 session, the Judicial Conference agreed to seek funding to implement the $75 rate in all judicial districts in FY 2001 in the event that Congress did not fund such rate in FY 2000.

USSC, At Last, Has Commissioners

On November 10, the Senate confirmed the nominations of the seven voting members of the U.S. Sentencing Commission (USSC). Judge Diana E. Murphy (8th Cir.) will serve as the new chair, with a term expiring October 31, 2005. John R. Steer, former General Counsel for the USSC, also will serve until October 31, 2005. The remaining members will serve staggered terms. Michael O'Neill, assistant professor of law, George Mason University School of Law; Judge Ruben Castillo (N.D. Ill.), and Judge William Sessions, III (D. Vt.) will serve terms expiring October 31, 2003. Judge Sterling R. Johnson, Jr. (E. D. N.Y.) and Judge Joe Kendall (N.D. Tex.) will serve until October 31, 2001.

Judge Diana E. Murphy (8th Cir.)

The USSC has been without commissioners since October 31, 1998, and the end of the 105th Congress. Earlier, the commission had been reduced to four members, three of whose terms had expired but who could serve until Congress adjourned sine die to end a session. Then the USSC's former chair, Judge Richard P. Conaboy, resigned effective October 31, 1998, to allow the President to designate a new chairman at the same time that six new members were expected to join the commission. "My leaving at this juncture ultimately is in the best interests of the commission," Conaboy said when he announced his resignation. "Both sentencing policy and the operation of the commission are better served if the incoming commissioners are accompanied by a new chairman." In fact, vacancies are nothing new to the commission, which has operated without its full complement of commissioners since 1996. But when Congress adjourned in the fall of 1998, no new members had been named to the USSC and, in subsequent months, difficulties were experienced filling the seven vacant commissioner seats.

The USSC establishes sentencing policies and practices for the federal criminal justice system. By law, one member of the USSC is appointed by the President as chair. At least three of the members shall be federal judges, and not more than four of the commission members shall be members of the same political party. An affirmative vote of four commissioners is required to amend the U.S. Sentencing Guidelines.

A Session Ends, But its Legislation Carries Over to 2000

Congress adjourned the first session of the 106th Congress on November 19, 1999, its departure delayed by the annual rite of passing appropriations bills with great difficulty. The final appropriations bill passed was an omnibus package, H.R. 3194, which combined five fiscal year 2000 appropriations measures, including funding for the Judiciary. An in-depth look at this bill begins on page one.

The first session saw little resolution of much of the legislation introduced over the last year. Only a few of the bills in which the Judiciary had an interest made it through both Houses and to the President's desk for his signature. **P.L. 106-37**, the Y2K Act, was an exception. This legislation, provisions of which the Judicial Conference had opposed, addresses year 2000 litigation and expands federal court jurisdiction over Y2K class actions.

The end of a session, however, does not halt action on the remaining bills on the legislative slate. When Congress convenes the second session of the 106th Congress in January 2000, activity will resume on these remaining bills and on other yet-to-be-introduced bills. Here is the current status of some of the bills that may affect the Judiciary.

Judicial Administration, Judgeships & Bankruptcy

An amended version of **H.R. 1752**, the proposed Federal Courts Improvement Act, was reported by the House Judiciary Committee in September. The House is expected to consider the bill early in the second session. The bill touches on a wide range of issues, including federal court jurisdiction, the authority of judicial officers and judicial branch personnel, and administrative operations.

The Senate Judiciary Subcommittee on Oversight and the Courts held hearings on **S. 253**, the Federal Ninth Circuit Reorganization Act of 1999, and the House also held hearings on the proposed reorganization. This bill incorporates the recommendations of the Commission on Structural Alternatives for Federal Courts of Appeals, among which is the proposed reorganization of the Ninth Circuit into three administrative divisions.

Some bills that have stalled in the first session may be taken up again in the second session. Among these are **S. 1145**, a bill containing the Judicial Conference recommendations for 69 Article III judgeships. S. 1145 was introduced in May 1999, but that was nearly the last activity on the bill. The same was true of **S. 1564**, the Federal Courts Budget Protection Act, which was introduced and referred to the Senate Committees on Budget and Governmental Affairs. S. 1564 would allow the Judiciary to submit is annual budget, including buildings, directly to Congress without going through the Office of Management and Budget.

Two bills on camera coverage of the courts, **S. 721** and a companion bill **H.R. 1281**, were introduced, and the House bill was referred to the Judiciary Subcommittee on Courts and Intellectual Property. The bills would allow, but not require, federal judges at all district and appellate levels to open their courtrooms to the photographing, electronic recording, and televising of federal court proceedings. A three-year sunset period is included. As reported by the House Judiciary Committee, a provision that would allow a presiding judge to permit cameras in the courtroom during court proceedings also is included in **H.R. 1752**.

H.R. 1048, the Judicial Branch Employment Non-Discrimination Act, was referred to the House Judiciary Subcommittee on the Constitution but has not been considered. By bringing the Judiciary within the scope of title VII of the Civil Rights Act of 1964, the bill would allow individuals to sue the Judiciary in federal court for alleged acts of discrimination.

One of the last bills to be considered by the Senate in the first session, **S. 625**, the Bankruptcy Reform Act, likely will be one of the first pieces of business in the second. The Senate was continuing work on the bill in the final week of the session, but could not complete consideration of the 320 amendments filed by Senators. The bill also would create 18 temporary bankruptcy judgeships and extend existing temporary bankruptcy judgeships in five districts. By unanimous consent, on January 25, the Senate will vote on a cloture motion that would limit debate. The House passed a companion bill, **H.R. 833**, in May.

Multidistrict Litigation/Class Actions

The Multidistrict, Multiparty, Multiforum Jurisdiction Act of 1999, **H.R. 2112**, passed both Houses, although the language differs in the House and Senate versions. H.R. 2112, as it passed the House, includes the proposal overturning the *Lexecon Inc. v. Milberg Weiss* decision, permitting a judge with a transferred case to retain it for trial or to transfer it to another district. It also includes a multiparty, multiforum jurisdiction proposal. The Senate–passed bill only includes the *Lexecon* proposal. Conferees are expected to meet in the next session to attempt to work out a mutually acceptable bill.

H.R. 1875, the Interstate Class Action Jurisdiction Act of 1999, passed the House by a vote of 222-207. This bill would grant federal district courts original jurisdiction based on minimal diversity over any civil action brought as a class, with limited exceptions. In the Senate, a hearing was held on **S. 353**, the Class Action Fairness Act of 1999, by the Judiciary Subcommittee on Administrative Oversight and the Courts. That bill, however, has not yet been reported out of subcommittee.

Crime Control Legislation

The Senate Judiciary Committee reported out **S.J. Res. 3**, the Crime Victims Rights Amendment to the Constitution. No full Senate vote on the amendment occurred in the first session, but Judiciary Committee chair, Senator Orrin Hatch (R-UT), has indicated he hopes to have the amendment on the floor of the Senate by next spring. The joint resolution proposes an amendment to the Constitution to protect the rights of crime victims. A statutory alternative to a Victims' Rights Amendment, **S. 934**, an approach preferred by the Judicial Conference, has been introduced in the Senate and referred to the Judiciary Committee.

Both the House and the Senate passed versions of a juvenile crime bill. At the end of November, **H.R. 1501**, the Consequences for Juvenile Offenders Act of 1999, was considered by a conference committee but was badly hobbled by disagreements over gun control provisions. Among other provisions, the bill would eliminate the traditional preference for state prosecution of juveniles, provide for prosecution of juveniles of not less than 14 years of age as adults, increase penalties for gang-related activities, and expand firearms prosecutions in the federal courts.

Several "hate crimes" bills were introduced in the first session that would provide for federal prosecution of a significant number of crimes traditionally prosecuted in the state courts. The principal versions are **H.R. 1082**, the Hate Crimes Prevention Act of 1999, and the Senate companion bill, **S. 622**. Another bill, **S. 1406**, would not likely result in federal prosecution of a significant number of traditionally state-prosecuted crimes, but would primarily establish data collection and study programs on hate crimes, and establish a grant program for state and local officials to investigate and prosecute hate crimes. The Senate Judiciary Committee held a hearing on the federal response to hate crimes, and the House Judiciary Committee held an oversight hearing on hate crimes violence.

S. 146, the Powder Cocaine Sentencing Act of 1999, would reduce the disparity between punishments for crack and powder cocaine by increasing the penalties for powder. Although the bill did not move in committee, its text was amended onto S. 625, the Bankruptcy Reform Act.

The House passed **H.R. 1869**, the Stalking Prevention and Victim Protection Act, which substantially expands the current interstate stalking statute, by encompassing e-mail, internet and telephone communications. The bill requires the court to issue at sentencing a protection order designed to protect the victim from further stalking by the convicted person. This bill has bipartisan support and is expected to move quickly through the Senate when Congress returns.

Court Advisory Councils Meet, Commend AO Director

At the fall meeting of the Administrative Office's Court and Joint Advisory Councils, council members commended Director Mecham for his "tireless efforts and remarkable success in attaining from Congress a significant increase above expected appropriation levels for this fiscal year, a cost-of-living adjustment for judicial officers and top executives, and a legislative fix to the FEGLI problem for judges."

The group expressed its particular appreciation for the Director's leadership in providing Judiciary employees with two important new benefits packages, long-term care insurance and a flexible benefit program, and for the implementation of a new, effective court advisory structure.

This was the third set of meetings for the councils since implementation of a revised advisory structure in October 1998. The three court councils (Appellate, District and Bankruptcy Court Advisory Councils), composed of judges and court unit executives from each court type, addressed such topics as the fiscal year 2000 budget, work measurement, and the case management/electronic case files project. The Joint Advisory Council, comprised of representative members from the court councils, plus a federal public defender, provided advice in four program areas: automation, finance and budget, human resources, and space and facilities.

Mediation continued from page 1

least one of the states were very skeptical," he explained, "and it was difficult for them to accept this as a regular course on cases I handle. But we made it through their skepticism with good humor and lots of effort."

Wheatley calls what Hogan did next a front-end global settlement conference. "All trial attorneys are used to the process of filing a complaint, then taking a number of depositions, discovery, reviewing documents, and having the case assigned for trial a couple of years later," said Wheatley. "Three months before trial you have a settlement conference and maybe you settle. Instead of waiting two years when there have been several million dollars of attorney fees, and hundreds of hours of clerk time taken up, I think Hogan felt we could get these cases settled before all those expenses had been incurred and all the court time expended." And despite the long and contentious litigation history, Hogan was optimistic. "Because the parties may have lost trust," he said, "they don't understand how things could be put together in a different way to everyone's benefit. It was my job to come, listen, and help develop some new creative options."

What followed were several settlement conferences in several states in which various parties reached agreements after discussions continuing well into the early morning hours. Wheatley remembers at least one session during which attorneys, in exhaustion, slept on the floor outside the courtroom. But after each agreement, settlements unraveled when new disputes arose, or as in one conference, when they were conditioned upon settlement of a lawsuit with a corporation not participating in the earlier discussions. The firm of retired Magistrate Judge John L. Wagner, now in private practice, also represented a party in one of the cases. "Judge Hogan would resolve one end of the problem, but it was like one piece of the entire puzzle," said Wagner. "I think that's when he decided to set a settlement conference with all the parties. He saw it as an opportunity to get a very difficult case resolved."

Meanwhile, the clock was ticking. One of the parties had been given a final deadline by its parent corporation, and tens of millions of dollars were riding on the success of a settlement by the end of the weekend. Hogan ordered all the parties to appear in Phoenix, Arizona. Wheatley cut short a family vacation in Hawaii. "We met on Sunday at 10:00 a.m.," said Wheatley, "and there must have been six different parties, and their attorneys and their accountants."

"It took us until 4:00 a.m. the next day to finalize all the documents," Hogan relates. "I think there were around 30 different documents, and every line was disputed, and mediated, and finally agreed upon." But that was far from the end. Hogan, who had seen three prior settlements fall apart, told all the parties to return in a few hours and, as Wheatley described it, "stay here until every paper is printed, signed, sealed, notarized, delivered and you shake hands and leave." All parties also agreed to a "czar clause," which provided that Hogan will decide any future disputes arising out of the settlement agreements during the next five years, without appeal.

"It was very intense," Wagner remembers, "but an awful lot got done. We settled three or four lawsuits and a couple of acquisitions. Judge Hogan was the catalyst. After the first session, he guided. He let the parties do the negotiations, and every part of the deal was hotly negotiated. When there were impasses, he'd make suggestions. Sometimes they were taken, sometimes not."

Wheatley also credits Hogan with the successful settlement. "He had a view that some cases just get bigger and bigger and finally people can't extricate themselves from the problem. . . . It was a case that needed to be resolved right then rather than over a 10-year period." In the end, a multidistrict dispute with multiple parties, involving more than 20 attorneys, at least four lawsuits, several acquisitions, and a 3-year history of fierce litigation was resolved in a settlement that took approximately four weekends and succeeded in establishing a new set of relationships for an industry.

"Many weeks of trial were saved, and frankly, many millions of dollars in attorneys' fees on the various cases."

Chief Judge Michael Hogan (D. Or.)

JANUARY 2000 PROGRAM CALENDAR
FOR THE FEDERAL JUDICIAL TELEVISION NETWORK

All times are Eastern Standard Time

ADAPTIVE MANAGER
Part One, Jan. 6, 1:30 p.m. LIVE; Part Two, Jan. 13, 1:00 p.m. LIVE; Part Three, Jan. 20, 1:00 p.m. LIVE; Part Four, Feb. 3, 1:00 p.m. LIVE

ADVANCES IN DRUG ABUSE AND ADDICTION RESEARCH
Jan. 14, 11:30 a.m.; Jan. 28, 11:30 a.m.

AGRICULTURAL BANKRUPTCY
Jan. 12, 11:30 a.m.; 3:30 p.m.; Jan. 26, 2:30 p.m.

ALL ABOUT THE CIRCUIT EXECUTIVE'S OFFICE
Jan. 13, 10:00 a.m.; Jan. 20, 3:30 p.m.

THE ARCHITECTURE OF ANTITRUST
Jan. 5, 11:30 a.m.; 3:30 p.m.; Jan. 12, 10:00 a.m.; 2:00 p.m.; Jan. 19, 11:30 a.m.; 2:30 p.m.; Jan. 26, 10:00 a.m.; 1:00 p.m.

ASSESSING TRAINING NEEDS: DESIGNING SURVEYS THAT WORK
Jan. 13, 8:30 a.m.; Jan. 20, 10:00 a.m.; Jan. 27, 8:30 a.m.

ASSESSMENT OF SEX OFFENDERS FOR SENTENCING, SUPERVISION, AND TREATMENT (NIC/CSOM)
Jan. 19, 8:30 a.m.

AUTOMATED DOCUMENT PRODUCTION PROGRAM
Jan. 4, 8:30 a.m.; Jan. 18, 2:00 p.m.

AVOIDING INFECTIOUS DISEASES
Jan. 10, 2:00 p.m.; Jan. 18, 10:00 a.m.; Jan. 24, 1:30 p.m.

BASIC BROWSER USAGE
Jan. 4, 2:30 p.m.; Jan. 7, 8:30 a.m.

CONTESTS AND COMPETITIONS AS INSTRUCTIONAL TOOLS
Part One. Jan. 5, 8:30 a.m., Jan. 14, 1:00 p.m.; **Part Two**, Jan. 6, 8:30 a.m.; Jan. 14, 3:00 p.m.

COURT TO COURT (OCTOBER 1999)
Jan. 13, 11:30 a.m.; 3:30 p.m.; Jan. 27, 10:30, 11:30 a.m.

DRUG TESTING: FACTS, RESEARCH, AND POLICY
Jan. 27, 1:00 p.m. LIVE

EDR PROCEDURAL OVERVIEW
Jan. 4, 9:30 a.m.; Jan. 10, 3:00 p.m.; Jan. 21, 10:00 a.m.

EDR SUBSTANTIVE OVERVIEW
Jan. 4, 10:30 a.m.; Jan. 10, 4:00 p.m.; Jan. 21, 11:00 a.m.

EXECUTIVE BRIEFING: PROPERTY MANAGEMENT
Jan. 4, 11:30 a.m.; Jan. 7, 1:30 p.m.; Jan. 11, 9:30 a.m.; Jan. 18, 4:00 p.m.; Jan. 21, 4:30 p.m.; Jan. 31, 3:00 p.m.

EXECUTIVE BRIEFING: TRAVEL REGULATIONS
Jan. 4, 12:00 p.m.; Jan. 11, 9:00 a.m.

FEDERAL RETIREMENT BENEFITS FOR COURT PERSONNEL—FREQUENTLY ASKED QUESTIONS
Jan. 4, 12:30 p.m.; Jan. 21, 12:00 p.m.

FJTN FROM WHERE YOU SIT
Jan. 6, 12:00 p.m. LIVE

HOME CONFINEMENT
Jan. 4, 1:30 p.m.; Jan. 21, 1:00 p.m.; Jan. 25, 3:30 p.m.

IN CAMERA
Every Monday at 8:30 a.m. (except Jan. 17); Every Tuesday at 4:30 p.m.

INTRODUCTION TO CASE MANAGEMENT/ELECTRONIC CASE FILES
Jan. 11, 10:00 a.m.; Jan. 21, 2:00 p.m.; Jan 25, 9:00 a.m.

INTRODUCTION TO *SENTRY* FOR PROBATION AND PRETRIAL SERVICES STAFF
Jan. 7, 12:30 p.m.; Jan. 11, 11:30 a.m.; Jan. 25, 10:30 a.m.; Jan. 31, 2:00 p.m.

JUDICIARY BENEFITS INITIATIVE: BENEFITS LEGISLATION OUTLOOK
Jan. 18, 1:00 p.m. LIVE; Jan. 24, 10:00 a.m.; Jan. 25, 2:30 p.m.; Jan. 31, 9:00 a.m.

JUDICIARY BENEFITS INITIATIVE: WHAT TO EXPECT AFTER ENROLLING IN THE SUPPLEMENTAL BENEFITS PROGRAMS
Jan. 3, 10:00 a.m.; Jan. 10, 1:00 p.m.; Jan. 21, 3:30 p.m.; Jan. 25, 11:30 a.m.

MANAGING GENERATION X
Jan. 6, 10:30 a.m.; Jan. 20, 8:30 a.m.

MAXIMIZING TAX SAVINGS THROUGH USE OF THE THRIFT SAVINGS PLAN
Jan. 3, 3:00 p.m.; Jan. 18, 11:00 a.m.; Jan. 21, 8:30 a.m.

NCIC 2000: LESSONS LEARNED FROM IMPLEMENTATION IN FOUR DISTRICTS
Jan. 25, 1:00 p.m. LIVE; Jan. 31, 10:00 a.m.

NEUROBIOLOGY OF ADDICTION
Jan. 14, 8:30 a.m.; Jan. 28, 8:30 a.m.

NEW FEDERAL COURT REPORTER ORIENTATION
Jan. 3, 11:00 a.m.; Jan. 18, 9:00 a.m.

ORGANIZATION AND JURISDICTION OF THE UNITED STATES BANKRUPTCY COURTS
Jan. 5, 10:30 a.m.; 2:30 p.m.; Jan. 19, 4:00 p.m.

OTHER CRIMES, WRONGS, OR ACTS: APPLYING FEDERAL RULE OF EVIDENCE 404(B), PARTS ONE &TWO
Jan. 26, 3:30 p.m.

AN OVERVIEW OF THE FEDERAL EMPLOYEES HEALTH BENEFITS
Jan. 3, 12:00 p.m.; Jan. 11, 12:30 p.m.; Jan. 24, 11:00 a.m.

AN OVERVIEW OF SEX OFFENDERS IN THE FEDERAL SYSTEM
Jan. 28, 1:00 p.m.

PEDOPHILES WHO USE THE INTERNET
Jan. 27, 3:00 p.m.

PERSPECTIVES ON PROBATION AND PRETRIAL SERVICES (APRIL 1999)
Jan. 6, 4:00 p.m.; Jan. 20, 11:30 a.m.; Jan. 28, 3:00, 4:00 p.m.

PHARMACOLOGY OF DRUGS OF ABUSE
Jan. 14, 10:00 a.m.; Jan. 28, 10:00 a.m.

PRISON LITIGATION REFORM ACT UPDATE
Jan. 5, 1:00 p.m.; Jan. 12, 8:30 a.m.; 12:30 p.m.; Jan. 19, 1:00 p.m.; Jan. 26, 8:30, 11:30 a.m.

REVIEW OF TRAVEL REGULATIONS FOR SUPPORT STAFF
Jan. 3, 1:00 p.m.; Jan. 24, 12:00 p.m.

SECURITY FOR JUDICIARY COMPUTER USERS
Jan. 3, 2:00 p.m.

SOCIAL SECURITY BENEFITS FOR EMPLOYEES UNDER FEDERAL EMPLOYEES RETIREMENT SYSTEM (FERS)
Jan. 25, 2:00 p.m.

SUPERVISING INDIVIDUALS WITH A DUAL DIAGNOSIS
Jan. 11, 1:30 p.m.; Jan. 24, 9:00 a.m.; Jan. 31, 11:00 a.m.

TECH TALK: TCP/IP
Jan. 3, 4:30 p.m.; Jan. 11, 8:30 a.m.; Jan. 18, 8:30 a.m.; Jan. 24, 4:30 p.m.; Jan. 25, 8:30 a.m.; Jan. 31, 4:30 p.m.

UNDERSTANDING MY SOCIAL SECURITY BENEFITS WITH A CIVIL SERVICE RETIREMENT SYSTEM ANNUITY
Jan. 24, 1:00 p.m.

USING KNOWLEDGE MANAGEMENT IN YOUR COURT
Jan. 10, 12:00 p.m.; Jan. 31, 3:30 p.m.

WORDPERFECT 8.0 BASICS
Jan. 10, 9:00 a.m.; Jan. 31, 12:00 p.m.

WORDPERFECT DOCUMENT FORMATTING
Jan. 3, 9:00 a.m.; Jan. 10, 11:00 a.m.

WORDPERFECT FILE MANAGEMENT
Jan. 7, 10:30 a.m.; Jan. 11, 2:30 p.m.

WORDPERFECT QUICKFAMILY
Jan. 7, 4:00 p.m.; Jan. 18, 3:00 p.m.

WORDPERFECT TEMPLATES
Jan. 7, 2:00 p.m.; Jan. 24, 2:30 p.m.

CALENDAR DATES FOR
THE THIRD BRANCH

Vol. 31 Number 12 December 1999

JANUARY

6-7 **Thursday-Friday**
Committee on Rules of Practice and Procedure

10-11 **Monday-Tuesday**
Committee on Federal-State Jurisdiction

10-11 **Monday-Tuesday**
Committee on Financial Disclosure

10-11 **Monday-Tuesday**
Advisory Committee on Criminal Rules

10-12 **Monday-Wednesday**
Workshop for Judges of the Ninth Circuit

13-14 **Thursday-Friday**
Committee on the Administration of the Bankruptcy System

13-15 **Thursday-Saturday**
Committee on Codes of Conduct

14-15 **Friday-Saturday**
Committee on the Budget

PLEASE POST

VACANCY ANNOUNCEMENTS
THE THIRD BRANCH
Vol. 31 Number 12 December 1999

CHIEF DEPUTY CLERK, Southern District of Florida, Miami
The U.S. District Court for the Southern District of Florida seeks applicants for the position of Chief Deputy Clerk. This professional managerial position is responsible for the day-to-day administration and supervision of the clerk's office under the direction of the court administrator/clerk of court. Candidates must have at least 10 years' experience as follows: a minimum of four years of progressively responsible administrative experience in public service or business; and a minimum of six years specialized experience in administrative, professional, supervisory, or managerial work that provided an opportunity to study, practice, and implement basic concepts, principles, policies, and theories of management in the workplace. A graduate degree in judicial, public, or business administration and federal judicial administrative and/or operational experience are highly desired. Experience with court automation and technology is desirable. Intra-district travel to divisional offices is required. Salary $95K-$120K. To apply, submit an original and two copies of resume, salary history, and at least four professional references to Clarence Maddox, Court Administrator/Clerk of Court, United States District Court, c/o Human Resources, 300 NE First Avenue, Room 243, Miami, Florida 33132. Jobline (305) 523-5288, General Information (305) 523-5980. For full announcement, see www.netside.net/usdcfls. **Application deadline: January 21, 20000**

TECHNICAL ASSISTANT, U.S. Court of Appeals for the Federal Circuit
The U.S. Court of Appeals for the Federal Circuit seeks applicants for the position of technical assistant for a two-year term in the Office of the Senior Technical Assistant. Duties include researching panel-approved opinions intended for publication, assisting judges on legal or technical matters, conducting legal research, and other duties. Work involves patent and all other areas within the court's jurisdiction. Applicants must have a degree in or relating to electrical engineering and an LL.B. or J.D. degree. Salary: Up to $104,851, JSP-15, step 10. Resumes may be sent to Ms. Adrienne Parker, Office of the Senior Technical Assistant, U.S. Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439.

BANKRUPTCY JUDGE, Southern District of Indiana
Applicants are sought for the position of bankruptcy judge for the U.S. District Court for the Southern District of Indiana. Applicants should be admitted to practice in at least one state court and be members in good standing of every bar of which they are members. Applicants should also possess and have a reputation for integrity and good character and be of sound physical and mental health. Applicants must also possess and have demonstrated outstanding legal ability and competence as evidenced by substantial legal experience, ability to deal with complex legal problems, aptitude for legal scholarship and writing, and familiarity with courts and court processes. Term of office: 14 years. Salary: $125,764. Applications may be obtained from the Bankruptcy Court Clerk for the Southern District of Indiana or from the Clerk of the U.S. Court of Appeals for the Seventh Circuit. Applications may be sent to Collins T. Fitzpatrick, Circuit Executive, Judicial Council of the Seventh Circuit, 2780 U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois, 60604. **Application deadline: January 15, 2000.**

BANKRUPTCY CLERK OF COURT, District of Delaware
The Bankruptcy Court for the District of Delaware seeks applicants for the position of clerk of court. The clerk is responsible for managing the administrative activities of the Clerk's office and overseeing the performance of the statutory duties of the office. Qualified persons should submit an original and two copies of a detailed resume including educational, work and salary history as well as a narrative statement. Salary range: JSP-16, $94,975 to $119,888. Submit application materials: Peter J. Walsh, Chief U.S. Bankruptcy Judge, District of Delaware, Judge's Chambers - Room 620, 824 Market Street, Wilmington, Delaware 19801. **Application deadline: January 15, 2000.**

MAGISTRATE JUDGESHIP, Southern District of Texas
The U.S. District Court for the Southern District of Texas seeks applicants for the position of full-time U.S. Magistrate Judge. Salary: $129,996. Term of office: 8 years. Application forms and more information on the position may be obtained from the clerk of the district court at www.txs.uscourts.gov or P.O. Box 61010, Houston, Texas, 77208, or at the district clerk's office in any division in the district. **Application deadline: February 29, 2000.**

EQUAL OPPORTUNITY EMPLOYERS

Hogan estimates he had a week's worth of work in the case. "It is true it's very intense work," he says, "but many weeks of trial were saved, and frankly, many millions of dollars in attorneys' fees on the various cases. Federal litigation is expensive, so if you can get folks before they've expended so many resources on the fight you have a better change of working out a solution."

And how did all those attorneys feel about working marathon sessions on the settlement? Didn't anyone just want to call it a day?

"We all said it to each other," admits Wheatley, "and if it had been a private mediator, we might have told him to forget it. But you don't say that to a federal judge. And the fact is that Judge Hogan is sitting there, doing it himself on a Sunday. He's not getting paid extra for working on Sunday, or for working at four in the morning. And he gives you a feeling that he cares so much about you and about your case that you're disabused of the idea of saying this is unfair. Because how can you say the judge is being unfair when he's treating himself even worse than he's treating you?"

"There's a certain momentum to a mediation case," says Wagner, who participated in many mediations while serving as a magistrate judge. "The momentum builds up like a snowball rolling down hill. You just need to keep it moving. The various businessmen had tried to put together a deal for the better part of a year. Judge Hogan pushed really hard to get this done, and sometimes that's what it takes to settle."

As for the final settlement, according to the attorneys involved, everybody is happy. "My clients were pretty delighted with the outcome," says Wagner. "They recognized the difficult circumstances and that without Judge Hogan it wouldn't have been done."

Changing Trends in Prisoner Petition Filings

Laws intended to reduce the number of prisoner petitions have produced mixed results, thanks to a rapidly growing prison population and the nature of prisoner petitions themselves.

Filings of prisoner petitions in the U.S. courts of appeals rose nearly 94 percent between 1987, when filings numbered 8,774, and 1996, when filings grew to 16,996. In recent years, prisoner petition appeals have constituted an increasingly larger percentage of overall appeals. After remaining relatively stable from 1987 to 1993, prisoner petitions jumped from representing 26 percent of total appeals in 1993 to 33 percent of total appeals by 1996.

In April 1996, two laws were enacted to address prisoner petitions, which can be broken down into prisoner civil rights petitions, habeas corpus prisoner petitions, and motions to vacate sentence. The Prison Litigation Reform Act (PLRA) was aimed at reducing frivolous or malicious prisoner petitions, primarily those concerning civil rights and prison conditions. Title I of the Antiterrorism and Effective Death Penalty Act (AEDPA) was intended to expedite or reduce habeas corpus petitions. After enactment of these laws, the number of prisoner petition appeals dropped 5 percent from 1996 to 1997, but rose 8 percent in 1998. These trends in prisoner petitions are better understood when the nature of the various types of prisoner petitions and what may influence them, are considered.

Civil Rights

Most prisoner petitions involve prisoner civil rights violations. (Until 1997, this category also referred to conditions of confinement, which is now a separate category. Throughout this article, the term "civil rights" refers to prisoner civil rights and conditions of confinement.) These filings more than doubled between 1987 and 1996.

In 1990, the Federal Courts Study Committee reported, "In part the growth in prisoner cases reflects the recognition of new rights and the expansion of old ones during the last several decades. In part it reflects the growth in the prison population and the increased length of sentences. In part it reflects the increasing awareness and ability of prisoners to challenge prison officials in court. . . Whatever its cause, the proliferation of prisoner civil rights cases is a source of obvious problems." In 1995, Senator Robert Dole introduced the PLRA, citing prisoner lawsuits involving such grievances as "insufficient storage locker space, a defective haircut by a prison barber, . . . and yes, being served chunky peanut butter instead of the creamy variety," all filed "free of charge. No court costs. No filing fees." Congress' reaction was to pass the PLRA, which established mandatory filing fees, restrictions on filing successive petitions, and requirements for exhausting administrative remedies before filing petitions. It also increased the ability of courts to dismiss immediately any petition that is frivolous, malicious, fails to state a claim upon which relief can be granted, or seeks monetary relief from a defendant who is immune from such relief. Perhaps in anticipation of the new law, filings rose 8 percent between March and June 1996. After the PLRA went into effect in April 1996, filings of civil rights prisoner petitions dropped 20 percent from 1996 to 1997, then fell 12 percent from 1997 to 1998. The number of filings spiked intermittently after 1996, but levels continued below pre-PLRA enactment levels.

*See **Filings** on page 9*

JUDICIAL MILESTONES

Appointed: Raymond C. Fisher, U.S. Court of Appeals Judge, U.S. Court of Appeals for the Ninth Circuit, October 29.

Appointed: Anna J. Brown, U.S. District Judge, U.S. District Court for the District of Oregon, October 27.

Appointed: Ronald A. Guzman, U.S. District Judge, U.S. District Court for the Northern District of Illinois, November 16.

Appointed: Faith S. Hochberg, U.S. District Judge, U.S. District Court for the District of New Jersey, November 16.

Appointed: M. James Lorenz, U.S. District Judge, U.S. District Court for the Southern District of California, October 25.

Appointed: Brian T. Stewart, U.S. District Judge, U.S. District Court for the District of Utah, November 15.

Appointed: Dwight H. Williams, Jr., U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the Middle District of Alabama, October 18.

Appointed: Ralph B. Kirscher, U.S. Bankruptcy Judge, U.S. Bankruptcy Court for the District of Montana, November 18.

Appointed: Andrew W. Austin, U.S. Magistrate Judge, U.S. District Court for the Western District of Texas, November 22.

Appointed: Valerie P. Cooke, U.S. Magistrate Judge, U.S. District Court for the District of Nevada, November 1.

Appointed: George J. Limbert, U.S. Magistrate Judge, U.S. District Court for the Northern District of Ohio, November 8.

Elevated: Judge Ann C. Williams, to U. S. Court of Appeals Judge, U.S. Court of Appeals for the Seventh Circuit, succeeding Judge Walter J. Cummings, November 17.

Elevated: Judge Maryanne Trump Barry, to U.S. Court of Appeals Judge, U.S. Court of Appeals for the Third Circuit, succeeding Judge H. Lee Sarokin, October 25.

Elevated: Judge Dee V. Benson, to Chief Judge, U.S. District Court for the District of Utah, succeeding Judge David Winter, November 2.

Elevated: Judge U. W. Clemon, to Chief Judge, U.S. District Court for the Northern District of Alabama, succeeding Judge Sam C. Pointer, Jr., November 20.

Elevated: Judge Richard G. Kopf, to Chief Judge, U.S. District Court for the District of Nebraska, succeeding Judge William G. Cambridge, November 1.

Elevated: Bankruptcy Judge William R. Sawyer, to Chief Bankruptcy Judge U.S. Bankruptcy Court for the Middle District of Alabama, succeeding Bankruptcy Judge Rodney R. Steele, October 18.

Senior Status: U.S. Court of Appeals Judge Melvin Brunetti, U.S. Court of Appeals for the Ninth Circuit, November 11.

Senior Status: U.S. Court of Appeals Judge Clyde H. Hamilton, U.S. Court of Appeals for the Fourth Circuit, November 30.

Senior Status: Judge Sam C. Pointer, Jr., U.S. District Court for the Northern District of Alabama, November 19.

Senior Status: Judge John C. Porfilio, U.S. Court of Appeals for the Tenth Circuit, October 15.

Senior Status: Judge David Sam, U.S. District Court for the District of Utah, November 1.

Retired: Court of Appeals Judge Patricia M. Wald, U.S. Court of Appeals for the District of Columbia, November 16.

Retired: Magistrate Judge Phyllis Halsey Atkins, U.S. District Court for the District of Nevada, October 31.

Resigned: Magistrate Judge Alan D Albright, U.S. District Court for the Western District of Texas, November 21.

Deceased: Senior Judge Robert C. Belloni, U.S. District Court for the District of Oregon, November 3.

Deceased: Senior Judge Charles E. Simons, Jr., U.S. District Court for the District of South Carolina, October 26.

Deceased: Magistrate Judge Pat Irwin, U.S. District Court for the Western District of Oklahoma, October 21.

THE THIRD BRANCH

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JUDICIAL BOXSCORE

As of December 1, 1999

Courts of Appeals	
Vacancies	26
Nominees	18
District Courts	
Vacancies	43
Nominees	17
Courts with "Judicial Emergencies"	26

For more information on vacancies in the federal Judiciary visit our website at www.uscourts.gov.

Filings continued from page 7

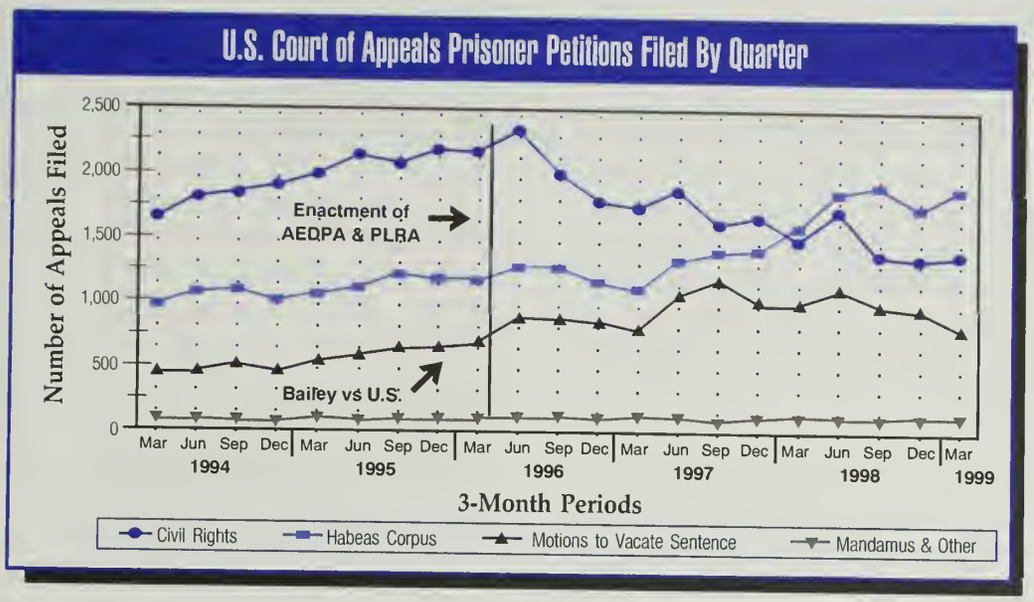
Habeas Corpus Petitions

Habeas corpus prisoner petitions question the legality of the prisoner's sentence. About 90 percent of these prisoner petitions are filed by state prisoners in an effort to vacate all or part of their sentences. The remaining 10 percent involve federal prisoners challenging selected aspects of their imprisonment. These appeals from state and federal prisoners increased 100 percent from 1987 to 1998, with a 65 percent jump occurring from 1994 to 1998. With the intent of expediting or reducing habeas corpus cases, Congress passed the AEDPA in 1996 to make substantial changes to habeas corpus procedures in federal courts.

The AEDPA established time limits for filing petitions and required that all issues be consolidated into one petition. Permission must be obtained from the courts of appeals before filing second or successive habeas petitions. The AEDPA also limited the scope of federal court review of the claims of state prisoners by requiring prisoners to exhaust all state remedies first and obtain certificates of appealability to file habeas petitions in the U.S. courts of appeals. Unlike civil rights filings under the PLRA, filings of habeas appeals increased after AEDPA became law, undergoing a 36 percent boost from 1997 to 1998. This may have been influenced by the new law's consolidation requirements and time limit on filing, or it may be attributed to increased federal and state prisoner populations, which went from nearly 60,000 in 1990 to well over 1 million by 1998.

Motions to Vacate Sentence

Motions to vacate sentence are habeas corpus petitions from federal prisoners seeking to have their sentences vacated, set aside, or corrected on the grounds that the sentence was imposed in violation of the Constitution or laws of the U.S., that the court imposed it without jurisdiction, that the sentence was in excess of the maximum authorized by law, or other reasons. These appeals soared 449 percent from 1987 to 1998. Growth in the federal prisoner population, which has nearly tripled from 1987 to 1998, may have contributed to the rise. But in 1995, a Supreme Court decision may have led many inmates to file motions. *Bailey v. U.S.* established that, for enhanced penalties for using a firearm during a drug trafficking offense or crime of violence to apply, a defendant must actually have used a gun while committing the offense and not merely have possessed the weapon. After *Bailey*, many inmates who had received such enhanced penalties filed for reductions in their sentences, and there was an increase of 39 percent in motions to vacate sentence from 1995 to 1996. Filings increased 26 percent from 1996 to 1997, but by 1998, the rate of increase had slowed to 5 percent. By March 1999, filings had dropped 33 percent from an all-time high in 1997. By this time, the effects of *Bailey* were waning, even as the AEDPA affected the filings of these types of appeals.



Devitt Award Nominations Open

Nominations for the 18th annual Edward J. Devitt Distinguished Service to Justice Award are being accepted. The award, which recognizes the dedicated public service of members of the federal Judiciary, is named for the late Judge Edward J. Devitt (D. Minn.). The award is administered by the American Judicature Society.

All Article III judges are eligible and nominations may be submitted by any interested person or organization. Entries should be in writing and should set forth the nominee's accomplishments and professional activities that have contributed to the cause of justice.

Nominations should be submitted by January 15, 2000, to Devitt Distinguished Service to Justice Award, 180 North Michigan Avenue, Suite 600, Chicago, Illinois 60601-7401.

State Justices' Mission is to Improve System

Chief Justice E. Norman Veasey of the Delaware Supreme Court is president of the Conference of Chief Justices and a member of the Judicial Conference Committee on Rules of Practice and Procedure.

Q: What is the mission of the Conference of Chief Justices (CCJ)? What issues does the Conference focus on and what perspective does its membership bring to these issues?

A: The mission of the CCJ is to improve the administration of justice in the states, commonwealths, and territories of the U.S. The CCJ accomplishes this mission by the effective mobilization of the collective resources of the highest judicial officers to develop, exchange, and disseminate information and knowledge of value to state judicial systems; educate, train, and develop leaders to become effective managers of state judicial systems; promote the vitality, independence, and effectiveness of state judicial systems; develop and advance policies in support of common interests and shared values; and support adequate funding and resources for the operations of the state courts.

Q: The Conference of Chief Justices co-sponsored this year's Conference on Public Trust and Confidence. What did the Conference produce in terms of plans or actions and will the CCJ have a role in implementing these plans?

A: We had a wonderful conference for two days in May in which the Conference of Chief Justices, the National Center for State Courts, the League of Women Voters, and the American Bar Association participated. Two members of the U.S. Supreme Court were keynote speakers. We looked at data developed by the Hearst Institute on perceptions of state courts. And while there is significant support for the good work that state courts are doing, there are four areas where the participants in the survey felt there were problems: one, litigation costs too much; two, it takes too long; three, it disadvantages the minorities; and four, the public doesn't have enough information about the court system.

When we were finished with this entire discussion, we proposed that there be a national action plan, now in draft form, that addresses these issues. There was a 60-day period to receive comments. A final version of the national action plan will be up on the website in December.

The national action plan really focuses on implementation. It is a concerted effort by state court systems and national organizations to increase public trust and confidence in the justice system. There are four tasks outlined in the plan: establish an implementation infrastructure, create a public trust and confidence electronic information network, develop an information base of activities to build public trust and confidence, and develop a resource plan. I think the essence of the implementation is that state courts and national organizations must at all times have in the forefront of their minds that what they are doing is consistent with developing public trust and confidence. . . and that the CCJ and the National Center for State Courts should be at the heart of it.

Chief Justice E. Norman Veasey, Delaware

Q: How do the Conference of Chief Justices and the Judicial Conference of the U.S. States interact and are there areas of shared concerns?

A: The interaction between the CCJ and the U.S. Judicial Conference is quite extensive. Members of the CCJ are full voting members of quite a number of committees of the U.S. Judicial Conference. I am a member of the Judicial Conference Standing Rules Committee, which is basically the parent committee of all of the advisory committees on civil and criminal procedure, bankruptcy, appellate and evidence.

There are several other areas. The most significant one is the Judicial Conference Federal-State Jurisdiction Committee, on which four chief justices serve along with federal judges. That committee is chaired by Judge Walter Stapleton (3rd Cir.), and his committee deals regularly with common problem areas of federalism between state courts and federal courts.

There are three federal judges who are permanent delegates to the meetings of the CCJ. The chair of the Federal-State Jurisdiction Committee, another member of that committee, and a member of the Judicial Conference Executive Committee regularly attend and participate in meetings of the CCJ.

Last month, we had a very significant meeting of the Boards of Directors of the CCJ, the National Center for the State Courts, and the Conference of State Court Administrators in Wilmington, Delaware, where we had an intensive planning session we called the Advance. It was in the nature of a retreat, where we dealt with issues of best practices for court systems and the challenges of federalism. Judge Walter K. Stapleton was an active participant. Attorney General Janet Reno also came and gave a stirring speech about state courts' responsibilities as problem-solvers. Supreme Court Justice David Souter spoke eloquently, too. Senator Joseph Biden (D-DE), Senator William Roth (R-DE), and Congressman Michael Castle (R-DE) were all there, along with academic and community leaders, state and federal judges.

Finally, there is significant interaction at the staff level between the government relations office of the National Center for State Courts, that serves the CCJ, and the legislative arm of the Administrative Office.

Q: The Conference of Chief Justices has been concerned with Rule 4.2, the issue of government attorney contacts with represented persons. What is the position of the CCJ?

A: One federalism issue that involves both state and federal courts is attorney conduct. Federal statutory law (the McDade Act) provides that federal prosecutors must comply with the ethics rules of the states in which they are licensed to practice. The Department of Justice would like to preempt state supreme courts in this area, and legislation has been introduced in the Senate to do that. CCJ opposes that legislation. Meanwhile, the Standing Rules Committee of the Judicial Conference, on which I serve, is studying various models for federal court rules on attorney conduct including a model that would provide that the federal courts would look to state ethics rules, and another model that would include some federal rules.

Q: In recent years, Congress has passed more legislation making federal actions of offenses that once were tried only in state courts. Is this trend welcomed by the state courts?

A: These activities of the Congress are problematic, both for state and federal courts. For example, there are class actions bills pending in the House and the Senate, which would assign most class actions to federal courts. Both the CCJ and the Judicial Conference have opposed that legislation and have done so independently but in the same vein. Basically, the position of the CCJ is that the House bill, for example, in its current form, "is an unwarranted incursion on the principles of judicial federalism underlying the system of government. In essence it would unilaterally transfer a significant category of cases from state to federal courts." The basis upon which this legislation is asserted is that there are alleged problems in the state courts. Yet we believe the proponents of the legislation have failed to identify any systemic problems in state class action procedures, but have relied on anecdotes that are now no longer applicable. The Judicial Conference took a similar position. Concern was expressed about the conflict between the bills' provisions and long-recognized principles of federalism.

The principles of federalism teach that the federal government is a government of limited power and the main power is in the state governments. Certainly in state courts there has historically been traditional plenary jurisdiction. In fact, state courts handle over 95 percent of all litigation in the U.S. and they have the resources to handle that. Federal courts have 5 percent, or less, of all the litigation in the United States. They have more limited resources. So this bill and several other bills would unwisely preempt state courts, shift to federal courts this massive caseload and take away this litigation from the state courts that have the significant resources to handle it, and send it over to federal courts.

There are other examples of federalization of traditional state crimes. The juvenile justice bills, for example, could have a great impact on state courts.

Q: Where is the greatest need in the state judicial system?

A: Anything that would reduce the caseloads of state courts would be welcome, but I think if you violate the principles of federalism to do it, then you run counter to what our justice system was designed to accomplish in handling this extensive jurisdictional area. I think once you break down the membrane between federal and state court jurisdiction you undermine the entire federal system, and who knows where it will lead?

In the state courts, we need to nurture these best practices that we discussed at our recent Advance meeting and deal with the other side of the coin of federal incursion into state courts. For example, state courts can develop systems for best practices including a sweeping change to electronic filing and other case-management advances that will enhance the public trust and confidence in state courts and may blunt

*See **Interview** on page 12*

Interview continued from page 11

any attacks in Congress on state court activities. As another example, we recently had a symposium for state and federal judges and academics on mass torts. We're working on a way to rationalize the handling of mass torts actions in state courts so that we can cooperate with federal courts.

Many state courts have very good relationships with the other two branches of government in their states. We're all tied together by an institutional resolve to achieve best practices at a national level through the CCJ, the National Center for State Courts, and other organizations. One funding source that we look to to improve state courts is the State Justice Institute (SJI), which is a vitally-needed, federally funded entity to which state courts can apply for funding of innovative programs to develop best practices. It is critical that Congress continue to fund SJI at a workable level.

I think that when we turn to the general area of state resources we all work together at the national level to develop ideas, and those ideas are translated into the specific interaction at the state level. We're all looking for more resources, including courthouses, more judges, electronic filing, and other technological advances. The advances being made by the National Center for State Courts teach each state court system how to handle their resources.

Yes, we're swamped by sheer numbers of cases, and yes, we're swamped by the complexity of those cases. There are increasing demands on state courts. But we're trying to cope with that at a state court level. We're getting help from national organizations and the federal establishment. Federal judges are cooperating with us. The Federal Judicial Center, for example, gives us advice and works in harmony with CCJ's sister organization, the National Center for State Courts. The Judicial Conference and the CCJ also are working cooperatively in this area.

THE THIRD BRANCH

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